



California State Board of Pharmacy

1625 N. Market Blvd, Suite N 219, Sacramento, CA 95834
Phone (916) 574-7900
Fax (916) 574-8618
www.pharmacy.ca.gov

STATE AND CONSUMERS SERVICES AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN, JR.

Legislation and Regulation Committee

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Deborah Veale, RPh
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Tappan Zee, Public Member

LEGISLATION AND REGULATION COMMITTEE

Report of the Meeting held on March 29, 2011.

PART II: LEGISLATION REPORT

a. Board Sponsored Legislation

ATTACHMENT 1

SB 431 (Emmerson): Pharmacies - Regulation

In January 2010, the board voted to pursue legislation to improve the board's enforcement tools as well as to better define the return of medicine via reverse distributors. These provisions are incorporated in SB 431. Below are the specific code sections:

- a. **§4104 – Licensed Employee, Theft or Impairment, Pharmacy Procedure**
Amend to clarify that a pharmacy shall provide the board, within 14 days, evidence of licensee's theft or impairment. Require a pharmacy to conduct an audit to determine the scope of a drug loss and to provide the board with a certified copy of the audit results.
- b. **§4105 – Retaining Records of Dangerous Drugs and Devices on Licensed Premises; Temporary Removal; Waivers; Access to Electronically Maintained Records**
Amend to specify the time period for which records shall be provided to the board when requested by an inspector or authorized representative of the board
- c. **§4112 – Nonresident Pharmacy; Registration; Provision of Information to Board; Maintaining Records; Patient Consultation**
Require that a nonresident pharmacy cannot allow a pharmacist, whose license has been revoked in California, to provide pharmacist related services to Californians.
- d. **§4040.5 – Reverse Distributor**
Specifies that a reverse distributor may not accept previously dispensed medicine and that previously dispensed medicine returned to a pharmacy can only be handled by a licensed integrated waste hauler. Defines "dispensed" for purposes of this section only. This provision was approved in concept only by the board in January 2009.

- e. §4081 – Records of Dangerous Drugs and Devices Kept Open for Inspection: Maintenance of Records, Current Inventory
Specifies that records documenting the return of drugs to a wholesaler or reverse distributor must include the quantity or weight of the drug being returned, the date returned and the name(s) to which the drugs were provided. Specifies that records documenting the return of drugs to a licensed integrated waste hauler shall include a list of the volume in weight and measurement, and the date and name of the hauler. Defines “licensed integrated waste hauler” for purposes of this section only. This provision was approved in concept only by the board in January 2009.
- f. §4126.5 – Furnishing Dangerous Drugs by a Pharmacy
Authorizes a pharmacy to furnish drugs to a licensed integrated waste hauler. Needs to authorize a pharmacy to accept returned product from a consumer in the event of a product recall.

Board staff continues to advocate this legislation and is working with the author’s office to address concerns raised. This bill passed out of the Senate Business, Professions and Economic Development Committee.

Current Status: Bill was referred back to Rules committee and will be sent to the Senate Environmental Quality Committee.

Senate Bill 943 (Senate Committee on Business, Professions and Economic Development) Omnibus

At the October 2010 Board Meeting, the board voted to pursue an omnibus provision to eliminate a reference to the previous pharmacists examination in Business and Professions Code Section 4200. This provision is contained in Senate Bill 943.

Current Status: Scheduled for a committee hearing in Senate Business, Professions and Economic Development on May 2, 2011.

ATTACHMENT 1 contains a copy of SB 431 as well as relevant portions of SB 943.

b. Legislation Introduced Impacting the Practice of Pharmacy or the Board’s Jurisdiction

1. Board of Pharmacy/Licensing

ATTACHMENT 2

AB 377 (Solorio) Pharmacy: Centralized Hospital Packaging

Version: As amended, April 14, 2011

Summary: This bill provides for centralized pharmacy packaging in a hospital, allowing the pharmacy to be located outside of a hospital on either the same premises or separate premises that is regulated under a hospital's license. The bill exempts from the definition of manufacturing, repackaging a drug for parenteral therapy, or oral therapy in a hospital for delivery to another pharmacy or hospital, as specified.

Committee Recommendation: None.

Recent Action: Referred to Assembly Appropriations Committee.

Recent Update: The board received a letter from the California Society of Health System requesting the board take a position of support on this measure. A copy of this correspondence is provided with the bill and analysis for this measure.

AB 399 (Lowenthal, Bonnie): Corrections - offender pharmacies

Version: As introduced, February 14, 2011

Summary: This bill would require the Department of Corrections and Rehabilitation to license all distributions centers and facilities with the board as part of its comprehensive pharmacy services program.

Committee Recommendation: Support

Recent Action: Hearing scheduled for May 3, 2011 in the Assembly Health Committee.

AB 847 (Lowenthal, Bonnie): Pharmacy Clinics

Version: As introduced, February 17, 2011

Summary: This bill would require the Department of Corrections and Rehabilitation to license all distributions centers and facilities with the board as part of its comprehensive pharmacy services program.

Committee Recommendation: Oppose Unless Amended - Licensure with the board should be required.

Recent Action: Hearing scheduled for May 3, 2011 in the Assembly Health Committee.

Recent Update: Board staff was advised that this measure will be a two-year bill.

SB 632 (Emmerson): Pharmacy

Version: As amended, March 24, 2011

Summary: This bill would prohibit a pharmacist from interchanging or substituting an opioid analgesic drug, as defined, for an opioid analgesic drug incorporating a tamper resistant technology, as defined, unless the opioid analgesic drug to be interchanged or substituted is described on a list to be prepared by the board. In those situations where the drug is not on the board's list, the bill would require the pharmacist to obtain consent from the prescriber prior to an interchange or substitution.

Committee Recommendation: Oppose.

Recent Action: Hearing scheduled for May 2, 2011 in the Senate Business, Professions and Economic Development Committee.

Unless otherwise noted, a copy of the bill and an analysis for these measures is provided in **ATTACHMENT 2**.

2. Controlled Substances/Marijuana

ATTACHMENT 3

AB 507 (Hayashi): Pain Management

Version: As amended, April 27, 2011

Summary: Repeals provisions in existing law which permit the Department of Justice (DOJ) to employ a physician to interview and examine any patient in connection with the prescription possession or use of a controlled substance, require the patient to submit to the interview and examination, and permit the physician to testify in prescribed administrative proceedings. Makes technical and conforming changes to existing law related to severe chronic intractable pain and to the California Intractable Pain Treatment Act (CIPT Act).

Committee Recommendation: Oppose

Recent Action: This measure has been amended twice since the committee reviewed it. The first amendments occurred on April 13, 2011 and removed the proposed changes to the board's unprofessional conduct statute, B&PC 4301. The bill was again amended on April 27, 2011. These new amendments again propose a change to B&PC 4301(d). This measure is scheduled for hearing before the Assembly Business, Professions and Consumer Protection Committee on May 3, 2011.

SB 847 (Correa): Medical Cannabis Licensing Act

Version: As amended, April 25, 2011

Summary: This bill would require the Department of Corrections and Rehabilitation to license all distribution centers and facilities with the board as part of its comprehensive pharmacy services program.

Committee Recommendation: Watch and express concern.

Recent Action: Hearing scheduled for April 27, 2011 in Senate Governance and Finance Committee.

Recent Update: This measure was significantly amended April 25, 2011 and now establishes criteria for a medical marijuana program to be located within a 600 foot radius of a residential zone or use.

Attachment 3 contains a copy of both measures as well as an analysis of AB 507.

3. Reporting Requirements/Records

ATTACHMENT 4

AB 1280 (Hill): Ephedrine - Retail Sale

Version: As amended, March 25, 2011

Summary: The bill contains provisions requiring the secure storage and monitoring of products containing any amount of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, as specified. This bill proposed a realtime tracking system beginning in January 2013 through December 2018.

Committee Recommendation: This measure was not previously brought to the committee.

Recent Action: Hearing scheduled for May 3, 2011 in Assembly Public Health Committee.

SB 315 (Wright): Ephedrine and Pseudoephedrine

Version: As introduced, February 14, 2011

Summary: This bill would classify pseudoephedrine as a prescription drug.

Committee Recommendation: Support.

Recent Action: Passed through Senate Public Safety Committee and referred to Senate Health Committee

Recent Update: The board received from the Oregon Pharmacist Association urging the board to support this measure. A copy of this letter is provided in the attachments for this measure.

SB 360 (DeSaulnier): Controlled Substance Utilization Review and Evaluation System

Version: As amended, April 14, 2011

Summary: This bill would revise Schedule I and Schedule II to add additional opiates, revise Schedule III to add additional depressants, anabolic steroid products, and materials, compounds, mixtures, or preparations containing chorionic gonadotropin (a hormone), and Schedule IV to add additional depressants and stimulants.

Committee Recommendation: Watch.

Recent Action: Hearing scheduled for May 3, 2011 in Senate Public Safety Committee.

Recent Update: The board has correspondence from the California Attorney General's Office requesting that the board support this measure. They note that SB 360 strengthens the Controlled Substances Utilization Review and Evaluation System (CURES) and California Security Printer programs administered by BNE. SB 360 improves the ability of BNE to deter prescription drug abuse and fraud, and the misuse of confidential CURES data.

Attachment 4 contains a copy of each measure as well as an analysis.

4. Healing Arts/DCA

ATTACHMENT 5

AB 675 (Hagman): Continuing Education

Version: As amended, April 5, 2011

Summary: This bill would specify that continuing education or competency courses that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal.

Committee Recommendation: The committee did not make a recommendation on this measure, but directed staff to seek clarification on measure.

Recent Action: Hearing scheduled for May 3, 2011 in Assembly Business, Professions and Consumer Protection.

Recent Update: Board staff requested clarification on this measure, but has not received a response from the author's office.

AB 958 (Berryhill): Regulatory boards - Limitation Periods

Version: As introduced, February 18, 2011

Summary: This bill would require the board to file an accusation within one year after the board discovers the violation.

Committee Recommendation: Oppose.

Recent Action: Referred to the Assembly Business, Professions and Consumer Protection Committee.

Recent Update: Board staff was advised that this measure will be a two-year bill.

SB 541 (Price) Regulatory boards: Expert Consultants

Version: As amended, April 13, 2011

Summary: This bill would authorize boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

Committee Recommendation: This measure was not previously considered by the committee.

Recent Action: This bill was amended April 13, 2011 to incorporate these provisions. A hearing is scheduled for May 2, 2011 in Senate Business, Professions and Economic Development.

SB 544 (Price): Healing Arts

Version: As amended, April 14, 2011

Summary: The bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice.

Committee Recommendation: This measure was not considered by the committee.

Recent Action: This bill was amended April 14, 2011 to contain these provisions. Hearing scheduled for May 2, 2011 in Senate Business, Professions and Economic Development.

SB 667 (Wyland): Naturopathic Doctors

Version: As amended, March 31, 2011

Summary: This bill would provide that a naturopathic doctor is not prohibited from ordering, prescribing, or administering a nonprescription substance that becomes a substance requiring a prescription based solely on its route of administration.

Committee Recommendation: This measure was not previously considered by the committee.

Recent Action: This bill was amended on March 31, 2011 to contain these provisions. The committee hearing scheduled for this measure was cancelled and has not been rescheduled.

Recent Update: Board staff was advised that this will be a two-year bill. A bill analysis is not provided for this measure

Unless otherwise noted, a copy of each bill and an analysis are provided for each measure in **Attachment 5**.

5. Other

ATTACHMENT 6

AB 389 (Mitchell): Bleeding disorders - bleeding clotting products

Version: As amended, March 30, 2011

Summary: This bill would impose specified requirements on providers of blood clotting products for home use for products used for the treatment and prevention of symptoms associated with bleeding disorders, including all forms of hemophilia.

Committee Recommendation: Watch.

Recent Action: Assembly Third Reading on April 26, 2011.

Recent Update: Board staff received correspondence from the sponsor of this bill requesting that the board remain neutral.

AB 604 (Skinner): Needle Exchange Programs

Version: As amended, April 5, 2011

Summary: This bill would authorize the State Department of Public Health to approve certain entities to provide hypodermic needle and syringe exchange services in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes.

Committee Recommendation: Support.

Recent Action: Assembly Third Reading on April 26, 2011

SB 41 (Yee): Disposal of Hypodermic Needles and Syringes

Version: As introduced, December 7, 2010

Summary: This bill would allow a physician or pharmacist to furnish 30 or fewer hypodermic needles and syringes solely for personal use to a person 30 years of age or older. The bill addresses the storage of products to ensure they would be available only to authorized personnel, would require that disposal options are provided to consumers, and would require pharmacies to provide written information or verbal counseling at the time of furnishing on how to access drug treatment.

Committee Recommendation: Support.

Recent Action: Passed out of Senate Public Health Committee on April 26, 2011 and referred to Senate Appropriations.

SB 514 (Simitian): Dextromethorphan - sale to minors prohibited

Version: As amended, April 25, 2011

Summary: This bill would make it illegal to sell dextromethorphan to a person under the age of 18 without a prescription.

Committee Recommendation: Support.

Recent Action: This measure was amended on April 25, 2011 and now requires the retailer to, in an over-the-counter sale without a prescription shall, if feasible, use a cash register that is equipped with an age-verification feature to monitor age-restricted items.

A copy of each bill and an analysis are provided for each measure in **Attachment 6**.

6. Additional Legislation Impacting the Board or Its Regulatory Jurisdiction

The board will have the opportunity to review additional legislation that affects the practice of pharmacy or the board's jurisdiction.

Attachment 1

AMENDED IN SENATE APRIL 11, 2011

SENATE BILL

No. 431

Introduced by Senator Emmerson

February 16, 2011

An act to amend Sections ~~4081~~, 4104, 4105, ~~and 4112~~ of 4112, and 4126.5 of, and to add Section 4126.7 to, the Business and Professions Code, relating to pharmacies.

LEGISLATIVE COUNSEL'S DIGEST

SB 431, as amended, Emmerson. Pharmacies: regulation.

Existing law, the Pharmacy Law, creates the California State Board of Pharmacy and makes it responsible for administering and enforcing the provisions of that law, including the licensure of pharmacies, as defined, and nonresident pharmacies that ship, mail, or deliver controlled substances or dangerous drugs or devices, as defined, into this state. *The Under existing law, a reverse distributor is any person who acts as an agent for a pharmacy, drug wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated or nonsalable dangerous drugs. A knowing violation of the Pharmacy Law is a crime. Existing law provides for the registration of hazardous waste haulers, as defined.*

This bill would prohibit a reverse distributor from accepting the return of dangerous drugs that have been dispensed to a patient that are later returned by the patient or patient's agent to a pharmacy, as specified, and would authorize only hazardous waste haulers to handle or dispose of those drugs.

Existing law requires that each pharmacy establish procedures for addressing the theft, diversion, or self-use of dangerous drugs by a licensed individual employed by or with the pharmacy, and that every

pharmacy report to the board within 30 days of the receipt or development of certain information affecting the ability of those individuals to practice the profession or occupation authorized by their license, as specified. Existing law requires an entity licensed by the board to retain records of the acquisition and disposition of dangerous drugs and devices in a specified manner. The law makes a knowing violation of its provisions a misdemeanor.

This bill would instead require a pharmacy to report and provide to the board, within 14 days of the receipt or development thereof, the information described above regarding the ability of licensed individuals employed by or with the pharmacy to practice the profession or occupation authorized by their license. The bill would require a pharmacy to conduct an audit of the theft, diversion, or self-use of dangerous drugs by a licensed individual employed by or with the pharmacy and provide, as specified, the board with a certified copy of the audit and its results. The bill would also require an entity licensed by the board to provide records to designated persons within 72 hours of the time of the request, unless that timeframe is extended by the board. The bill would prohibit a pharmacist whose license was revoked by the board to perform pharmacy duties, as specified, for a nonresident pharmacy.

Existing law requires all records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices to be at all times during business hours open to inspection by authorized officers of the law and preserved at least 3 years from the date of making. Existing law requires every person or entity who maintains a stock of dangerous drugs or dangerous devices to keep a current inventory.

This bill would require that any record pertaining to the return of dangerous drugs to a wholesaler, reverse distributor, or hazardous waste hauler include specified information, including the quantity or weight of the drugs returned.

Because this bill would specify additional requirements under the Pharmacy Law, a violation of which is a crime, it would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 4081 of the Business and Professions*
2 *Code is amended to read:*

3 4081. (a) All records of manufacture and of sale, acquisition,
4 or disposition of dangerous drugs or dangerous devices shall be
5 at all times during business hours open to inspection by authorized
6 officers of the law, and shall be preserved for at least three years
7 from the date of making. A current inventory shall be kept by every
8 manufacturer, wholesaler, pharmacy, veterinary food-animal drug
9 retailer, physician, dentist, podiatrist, veterinarian, laboratory,
10 clinic, hospital, institution, or establishment holding a currently
11 valid and unrevoked certificate, license, permit, registration, or
12 exemption under Division 2 (commencing with Section 1200) of
13 the Health and Safety Code or under Part 4 (commencing with
14 Section 16000) of Division 9 of the Welfare and Institutions Code
15 who maintains a stock of dangerous drugs or dangerous devices.

16 (b) The owner, officer, and partner of a pharmacy, wholesaler,
17 or veterinary food-animal drug retailer shall be jointly responsible,
18 with the pharmacist-in-charge or designated
19 representative-in-charge, for maintaining the records and inventory
20 described in this section.

21 (c) The pharmacist-in-charge or designated
22 representative-in-charge shall not be criminally responsible for
23 acts of the owner, officer, partner, or employee that violate this
24 section and of which the pharmacist-in-charge or designated
25 representative-in-charge had no knowledge, or in which he or she
26 did not knowingly participate.

27 (d) *Any record pertaining to the return of dangerous drugs to*
28 *a wholesaler or provided to a reverse distributor shall document*
29 *the quantity or weight of the drugs returned, the date the drugs*
30 *were returned, and the name of the reverse distributor or*
31 *wholesaler to whom the drugs were provided.*

32 (e) *Any record pertaining to the return of dangerous drugs to*
33 *a hazardous waste hauler, as described in Section 117660 of the*
34 *Health and Safety Code, shall list the volume in weight or*
35 *measurement of the pharmaceutical waste returned, the date the*

1 *waste was returned, and the name of the hazardous waste hauler*
2 *to whom the waste was provided.*

3 **SECTION 1.**

4 *SEC. 2.* Section 4104 of the Business and Professions Code is
5 amended to read:

6 4104. (a) Every pharmacy shall have in place procedures for
7 taking action to protect the public when a licensed individual
8 employed by or with the pharmacy is discovered or known to be
9 chemically, mentally, or physically impaired to the extent it affects
10 his or her ability to practice the profession or occupation authorized
11 by his or her license, or is discovered or known to have engaged
12 in the theft, diversion, or self-use of dangerous drugs.

13 (b) Every pharmacy shall have written policies and procedures
14 for addressing chemical, mental, or physical impairment, as well
15 as theft, diversion, or self-use of dangerous drugs, among licensed
16 individuals employed by or with the pharmacy.

17 (c) Every pharmacy shall report and provide to the board, within
18 ~~30~~ 14 days of the receipt or development of ~~thereof~~, the following
19 information with regard to any licensed individual employed by
20 or with the pharmacy:

21 (1) Any admission by a licensed individual of chemical, mental,
22 or physical impairment affecting his or her ability to practice.

23 (2) Any admission by a licensed individual of theft, diversion,
24 or self-use of dangerous drugs.

25 (3) Any video or documentary evidence demonstrating chemical,
26 mental, or physical impairment of a licensed individual to the
27 extent it affects his or her ability to practice.

28 (4) Any video or documentary evidence demonstrating theft,
29 diversion, or self-use of dangerous drugs by a licensed individual.

30 (5) Any termination based on chemical, mental, or physical
31 impairment of a licensed individual to the extent it affects his or
32 her ability to practice.

33 (6) Any termination of a licensed individual based on theft,
34 diversion, or self-use of dangerous drugs.

35 (d) The pharmacy shall conduct an audit to determine the
36 quantity and type of dangerous drugs stolen, diverted, or used by
37 a licensed individual employed by or with the pharmacy. The
38 pharmacy shall submit to the board a ~~certified~~ copy of the audit
39 within 30 days of the receipt or development of information *initial*

1 *report to the board regarding the evidence described in paragraph*
2 ~~(4)~~ of subdivision (c).

3 (e) Anyone making a report authorized or required by this
4 section shall have immunity from any liability, civil or criminal,
5 that might otherwise arise from the making of the report. Any
6 participant shall have the same immunity with respect to
7 participation in any administrative or judicial proceeding resulting
8 from the report.

9 ~~SEC. 2.~~

10 SEC. 3. Section 4105 of the Business and Professions Code is
11 amended to read:

12 4105. (a) All records or other documentation of the acquisition
13 and disposition of dangerous drugs and dangerous devices by any
14 entity licensed by the board shall be retained on the licensed
15 premises in a readily retrievable form.

16 (b) The licensee may remove the original records or
17 documentation from the licensed premises on a temporary basis
18 for license-related purposes. However, a duplicate set of those
19 records or other documentation shall be retained on the licensed
20 premises.

21 (c) The records required by this section shall be retained on the
22 licensed premises for a period of three years from the date of
23 making.

24 (d) Any records that are maintained electronically shall be
25 maintained so that the pharmacist-in-charge, the pharmacist on
26 duty if the pharmacist-in-charge is not on duty, or, in the case of
27 a veterinary food-animal drug retailer or wholesaler, the designated
28 representative on duty, shall, at all times during which the licensed
29 premises are open for business, be able to produce a hard copy
30 and electronic copy of all records of acquisition or disposition or
31 other drug or dispensing-related records maintained electronically.

32 (e) (1) Notwithstanding subdivisions (a), (b), and (c), the board,
33 may upon written request, grant to a licensee a waiver of the
34 requirements that the records described in subdivisions (a), (b),
35 and (c) be kept on the licensed premises.

36 (2) A waiver granted pursuant to this subdivision shall not affect
37 the board's authority under this section or any other provision of
38 this chapter.

39 (f) When requested by an authorized officer of the law or by an
40 authorized representative of the board, the owner, corporate officer,

1 or manager of an entity licensed by the board shall provide the
2 board with the requested records within 72 hours of the time the
3 request was made. The entity may request in writing an extension
4 of this timeframe for a period not to exceed 14 days from the date
5 the records were requested. A request for an extension of time is
6 subject to the approval of the board.

7 ~~SEC. 3.~~

8 *SEC. 4.* Section 4112 of the Business and Professions Code is
9 amended to read:

10 4112. (a) Any pharmacy located outside this state that ships,
11 mails, or delivers, in any manner, controlled substances, dangerous
12 drugs, or dangerous devices into this state shall be considered a
13 nonresident pharmacy.

14 (b) A person may not act as a nonresident pharmacy unless he
15 or she has obtained a license from the board. The board may
16 register a nonresident pharmacy that is organized as a limited
17 liability company in the state in which it is licensed.

18 (c) A nonresident pharmacy shall disclose to the board the
19 location, names, and titles of (1) its agent for service of process in
20 this state, (2) all principal corporate officers, if any, (3) all general
21 partners, if any, and (4) all pharmacists who are dispensing
22 controlled substances, dangerous drugs, or dangerous devices to
23 residents of this state. A report containing this information shall
24 be made on an annual basis and within 30 days after any change
25 of office, corporate officer, partner, or pharmacist.

26 (d) All nonresident pharmacies shall comply with all lawful
27 directions and requests for information from the regulatory or
28 licensing agency of the state in which it is licensed as well as with
29 all requests for information made by the board pursuant to this
30 section. The nonresident pharmacy shall maintain, at all times, a
31 valid unexpired license, permit, or registration to conduct the
32 pharmacy in compliance with the laws of the state in which it is a
33 resident. As a prerequisite to registering with the board, the
34 nonresident pharmacy shall submit a copy of the most recent
35 inspection report resulting from an inspection conducted by the
36 regulatory or licensing agency of the state in which it is located.

37 (e) All nonresident pharmacies shall maintain records of
38 controlled substances, dangerous drugs, or dangerous devices
39 dispensed to patients in this state so that the records are readily
40 retrievable from the records of other drugs dispensed.

(f) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(g) A nonresident pharmacy shall not permit a pharmacist whose license has been revoked by the board to manufacture, compound, furnish, sell, dispense, or initiate the prescription of a dangerous drug or dangerous device, or to provide any pharmacy-related service, to a person residing in California.

(h) The board shall adopt regulations that apply the same requirements or standards for oral consultation to a nonresident pharmacy that operates pursuant to this section and ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state, as are applied to an in-state pharmacy that operates pursuant to Section 4037 when the pharmacy ships, mails, or delivers any controlled substances, dangerous drugs, or dangerous devices to residents of this state. The board shall not adopt any regulations that require face-to-face consultation for a prescription that is shipped, mailed, or delivered to the patient. The regulations adopted pursuant to this subdivision shall not result in any unnecessary delay in patients receiving their medication.

(i) The registration fee shall be the fee specified in subdivision (a) of Section 4400.

(j) The registration requirements of this section shall apply only to a nonresident pharmacy that ships, mails, or delivers controlled substances, dangerous drugs, and dangerous devices into this state pursuant to a prescription.

(k) Nothing in this section shall be construed to authorize the dispensing of contact lenses by nonresident pharmacists except as provided by Section 4124.

SEC. 5. Section 4126.5 of the Business and Professions Code is amended to read:

4126.5. (a) A pharmacy may furnish dangerous drugs only to the following:

1 (1) A wholesaler owned or under common control by the
2 wholesaler from whom the dangerous drug was acquired.

3 (2) The pharmaceutical manufacturer from whom the dangerous
4 drug was acquired.

5 (3) A licensed wholesaler acting as a reverse distributor.

6 (4) Another pharmacy or wholesaler to alleviate a temporary
7 shortage of a dangerous drug that could result in the denial of
8 health care. A pharmacy furnishing dangerous drugs pursuant to
9 this paragraph may only furnish a quantity sufficient to alleviate
10 the temporary shortage.

11 (5) A patient or to another pharmacy pursuant to a prescription
12 or as otherwise authorized by law.

13 (6) A health care provider that is not a pharmacy but that is
14 authorized to purchase dangerous drugs.

15 (7) To another pharmacy under common control.

16 (8) *A hazardous waste hauler, as described in Section 117660*
17 *of the Health and Safety Code, for the sole purpose of waste*
18 *disposal of pharmaceutical waste returned to the pharmacy by a*
19 *patient or patient's agent.*

20 (b) Notwithstanding any other provision of law, a violation of
21 this section may subject the person or persons who committed the
22 violation to a fine not to exceed the amount specified in Section
23 125.9 for each occurrence pursuant to a citation issued by the
24 board.

25 (c) Amounts due from any person under this section on or after
26 January 1, 2005, shall be offset as provided under Section 12419.5
27 of the Government Code. Amounts received by the board under
28 this section shall be deposited into the Pharmacy Board Contingent
29 Fund.

30 (d) For purposes of this section, "common control" means the
31 power to direct or cause the direction of the management and
32 policies of another person whether by ownership, by voting rights,
33 by contract, or by other means.

34 *SEC. 6. Section 4126.7 is added to the Business and Professions*
35 *Code, to read:*

36 *4126.7. (a) A reverse distributor shall not accept the return*
37 *of dangerous drugs that have been dispensed to a patient that are*
38 *later returned by the patient or the patient's agent to the pharmacy*
39 *or another licensed entity.*

1 ***(b) Dangerous drugs returned by a patient or a patient’s agent***
2 ***to a pharmacy, if accepted by the pharmacy, may be picked up or***
3 ***handled only by a hazardous waste hauler, as described in Section***
4 ***117660 of the Health and Safety Code.***

5 ***(c) For purposes of this section, “dispensed” means that the***
6 ***dangerous drugs have been provided to the patient or patient’s***
7 ***agent and taken from a pharmacy.***

8 ~~SEC. 4.~~

9 **SEC. 7.** No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

Introduced by Committee on Business, Professions and Economic Development (Senators Price (Chair), Corbett, Correa, Emmerson, Hernandez, Negrete McLeod, Vargas, Walters, and Wyland)

March 31, 2011

An act to amend Sections 1916, 1918, 1922, 1927, 1950, 1952, 1955, 1957, 1959, 1961, 1962, 1963, 1966.1, 2736.5, 2836.2, 2936, 4200, 4980.36, 4980.37, 4980.40.5, 4980.42, 4980.43, 4980.45, 4982.25, 4989.54, 4990.38, 4992.3, 4992.36, 4996.13, 4996.24, 4999.12, and 4999.90 of, to add Sections 1902.1, 4999.91, and 4999.455 to, and to repeal Section 1945 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 943, as introduced, Committee on Business, Professions and Economic Development. Healing arts.

Existing law provides for the licensure and regulation of various healing arts licensees by boards within the Department of Consumer Affairs.

(1) Existing law, the Dental Practice Act, provides for the licensure and regulation of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions by the Dental Hygiene Committee of California within the Dental Board of California.

Existing law requires applicants for licensure to provide fingerprint images for submission to governmental agencies, in order to, among other things, establish the identity of the applicant. Existing law requires the committee to submit these fingerprint images to the Department of Justice in order to obtain specified criminal offender record information.

1 conduct relating to the practice of psychology, the “Ethical
2 Principles and Code of Conduct” published by the American
3 Psychological Association (APA). Those standards shall be applied
4 by the board as the accepted standard of care in all licensing
5 examination development and in all board enforcement policies
6 and disciplinary case evaluations.

7 To facilitate consumers in receiving appropriate psychological
8 services, all licensees and registrants shall be required to post, in
9 a conspicuous location in their principal psychological business
10 office, a notice which reads as follows:

11
12 “NOTICE TO CONSUMERS: The Department of Consumer
13 Affairs Board of Psychology receives and responds to questions
14 and complaints regarding the practice of psychology. If you have
15 questions or complaints, you may contact the board on the
16 Internet at www.psychboard.ca.gov, by calling 1-866-503-3221,
17 or by writing to the following address:

18 Board of Psychology
19 ~~1422 Howe Avenue, Suite 22~~
20 ~~Sacramento, California 95825-3236~~
21 *2005 Evergreen Street, Suite 1400*
22 *Sacramento, California 95815-3894*
23

24 SEC. 19. Section 4200 of the Business and Professions Code
25 is amended to read:

26 4200. (a) The board may license as a pharmacist an applicant
27 who meets all the following requirements:

28 (1) Is at least 18 years of age.

29 (2) (A) Has graduated from a college of pharmacy or
30 department of pharmacy of a university recognized by the board;
31 or

32 (B) If the applicant graduated from a foreign pharmacy school,
33 the foreign-educated applicant has been certified by the Foreign
34 Pharmacy Graduate Examination Committee.

35 (3) Has completed at least 150 semester units of collegiate study
36 in the United States, or the equivalent thereof in a foreign country.
37 No less than 90 of those semester units shall have been completed
38 while in resident attendance at a school or college of pharmacy.

39 (4) Has earned at least a baccalaureate degree in a course of
40 study devoted to the practice of pharmacy.

1 (5) Has completed 1,500 hours of pharmacy practice experience
2 or the equivalent in accordance with Section 4209.

3 (6) ~~Has passed a written and practical examination given by the~~
4 ~~board prior to December 31, 2003, or has~~ passed the North
5 American Pharmacist Licensure Examination and the California
6 Practice Standards and Jurisprudence Examination for Pharmacists
7 on or after January 1, 2004.

8 (b) Proof of the qualifications of an applicant for licensure as a
9 pharmacist shall be made to the satisfaction of the board and shall
10 be substantiated by affidavits or other evidence as may be required
11 by the board.

12 (c) Each person, upon application for licensure as a pharmacist
13 under this chapter, shall pay to the executive officer of the board
14 the fees provided by this chapter. The fees shall be compensation
15 to the board for investigation or examination of the applicant.

16 SEC. 20. Section 4980.36 of the Business and Professions
17 Code is amended to read:

18 4980.36. (a) This section shall apply to the following:

19 (1) Applicants for licensure or registration who begin graduate
20 study before August 1, 2012, and do not complete that study on
21 or before December 31, 2018.

22 (2) Applicants for licensure or registration who begin graduate
23 study before August 1, 2012, and who graduate from a degree
24 program that meets the requirements of this section.

25 (3) Applicants for licensure or registration who begin graduate
26 study on or after August 1, 2012.

27 (b) To qualify for a license or registration, applicants shall
28 possess a doctor's or master's degree meeting the requirements of
29 this section in marriage, family, and child counseling, marriage
30 and family therapy, *couple and family therapy*, psychology, clinical
31 psychology, counseling psychology, or counseling with an
32 emphasis in either marriage, family, and child counseling or
33 marriage and family therapy, obtained from a school, college, or
34 university approved by the Bureau for Private Postsecondary and
35 Vocational Education or accredited by either the Commission on
36 the Accreditation of Marriage and Family Therapy Education or
37 a regional accrediting agency recognized by the United States
38 Department of Education. The board has the authority to make the
39 final determination as to whether a degree meets all requirements,

Attachment 2

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 377

Introduced by Assembly Member Solorio

February 14, 2011

An act to amend Sections 4029 and 4033 of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as amended, Solorio. Pharmacy.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacies, including hospital pharmacies, by the California State Board of Pharmacy, and makes a knowing violation of that law a crime. Existing law prohibits the operation of a pharmacy without a license and a separate license is required for each pharmacy location. Under existing law, a hospital pharmacy, as defined, includes a pharmacy located outside of the hospital in another physical plant. However, as a condition of licensure by the board for these pharmacies, pharmaceutical services may only be provided to registered hospital patients who are on the premises of the same physical plant in which the pharmacy is located and those services must be directly related to the services or treatment plan administered in the physical plant. Existing law imposes various requirements on manufacturers, as defined, and states that a manufacturer does not mean a pharmacy compounding a drug for parenteral therapy, pursuant to a prescription, for delivery to another pharmacy for the purpose of delivering or administering the drug to the patient or patients, provided that neither the components for the drug nor the drug are compounded, fabricated, packaged, or otherwise prepared prior to receipt of the prescription.

This bill would provide that a hospital pharmacy also includes a pharmacy, licensed by the board, that may be located outside of the hospital in either another physical plant on the same premises or on a separate premises, located within a 100-mile radius of the hospital, that is regulated under a hospital's license, *but would impose limitations on the services provided by a centralized hospital pharmacy*. The bill would eliminate the conditions of licensure by the board that limit the services provided by the pharmacy in the other physical plant, but would require that any unit-dose medication produced by a hospital pharmacy under common ownership be barcoded to be readable at the patient's bedside. The bill would authorize a hospital pharmacy to prepare and store a limited quantity of unit-dose medications in advance of a patient-specific prescription under certain circumstances. The bill would also provide that a "manufacturer" does not mean a pharmacy compounding or repackaging a drug for parenteral therapy or oral therapy in a hospital for delivery to another pharmacy or hospital under common ownership in order to dispense or administer the drug to the patient or patients pursuant to a prescription or order. The bill would require a pharmacy compounding or repackaging a drug pursuant to this provision to notify the board of the location of the compounding or repackaging within a specified period of time. Because a knowing violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4029 of the Business and Professions
- 2 Code is amended to read:
- 3 4029. (a) "Hospital pharmacy" means and includes a pharmacy,
- 4 licensed by the board, located within any licensed hospital,
- 5 institution, or establishment that maintains and operates organized
- 6 facilities for the diagnosis, care, and treatment of human illnesses
- 7 to which persons may be admitted for overnight stay and that meets

1 all of the requirements of this chapter and the rules and regulations
2 of the board.

3 (b) A hospital pharmacy also includes a pharmacy, licensed by
4 the board, that may be located outside of the hospital, in either
5 another physical plant on the same premises or on a separate
6 premises, located within a ~~100-mile~~ 100-mile radius of the hospital,
7 that is regulated under a hospital's license. *A centralized hospital*
8 *pharmacy may only provide pharmaceutical services to its own*
9 *patients who are either admitted or registered patients of a hospital*
10 *within the same health care system.* Nothing in this subdivision
11 shall be construed to restrict or expand the services that a hospital
12 pharmacy may provide.

13 (c) Any unit-dose medication produced by a hospital pharmacy
14 under common ownership, as described in Section 4033, shall be
15 barcoded to be readable at the patient's bedside.

16 (d) A hospital pharmacy may prepare and store a limited quantity
17 of unit-dose medications in advance of receipt of a patient-specific
18 prescription in a quantity as is necessary to ensure continuity of
19 care for an identified population of patients of the hospital based
20 on a documented history of prescriptions for that patient population.

21 (e) Nothing in this section shall limit the obligation of a hospital
22 pharmacy, hospital, or pharmacist to comply with all applicable
23 federal and state laws.

24 SEC. 2. Section 4033 of the Business and Professions Code is
25 amended to read:

26 4033. (a) (1) "Manufacturer" means and includes every person
27 who prepares, derives, produces, compounds, or repackages any
28 drug or device except a pharmacy that manufactures on the
29 immediate premises where the drug or device is sold to the ultimate
30 consumer.

31 (2) Notwithstanding paragraph (1), "manufacturer" shall not
32 mean a pharmacy compounding or repackaging a drug for
33 parenteral therapy or oral therapy in a hospital for delivery to
34 another pharmacy or hospital under common ownership for the
35 purpose of dispensing or administering the drug, pursuant to a
36 prescription or order, to the patient or patients named in the
37 prescription or order. A pharmacy compounding or repackaging
38 a drug as described in this paragraph shall notify the board in
39 writing of the location where the compounding or repackaging is
40 being performed within 30 days of initiating the compounding or

1 repackaging. The pharmacy shall report any change in that
2 information to the board in writing within 30 days of the change.

3 (3) Notwithstanding paragraph (1), “manufacturer” shall not
4 mean a pharmacy that, at a patient’s request, repackages a drug
5 previously dispensed to the patient, or to the patient’s agent,
6 pursuant to a prescription.

7 (b) Notwithstanding subdivision (a), as used in Sections 4034,
8 4163, 4163.1, 4163.2, 4163.3, 4163.4, and 4163.5, “manufacturer”
9 means a person who prepares, derives, manufactures, produces,
10 or repackages a dangerous drug, as defined in Section 4022, device,
11 or cosmetic. Manufacturer also means the holder or holders of a
12 New Drug Application (NDA), an Abbreviated New Drug
13 Application (ANDA), or a Biologics License Application (BLA),
14 provided that such application has been approved; a manufacturer’s
15 third-party logistics provider; a private label distributor (including
16 colicensed partners) for whom the private label distributor’s
17 prescription drugs are originally manufactured and labeled for the
18 distributor and have not been repackaged; or the distributor agent
19 for the manufacturer, contract manufacturer, or private label
20 distributor, whether the establishment is a member of the
21 manufacturer’s affiliated group (regardless of whether the member
22 takes title to the drug) or is a contract distributor site.

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 377

VERSION: As Amended April 14, 2011

AUTHOR: Solorio

SPONSOR: California Hospital Association

COMMITTEE RECOMMENDED POSITION: None

SUBJECT: Pharmacies: Centralized Hospital Packaging

AFFECTED SECTIONS: Amend Sections 4029 and 4033 of the Business and Professions Code

CURRENT STATUS: Referred to Assembly Appropriations Committee.

EXISTING LAW:

1. Defines a hospital pharmacy as a pharmacy licensed by the board that is located inside a hospital as specified.
2. Allows a hospital pharmacy to be located outside of the hospital building if the hospital pharmacy is on the California Department of Public Health's consolidated license and if the pharmacy is only providing pharmacy services to inpatients of the hospital.
3. Defines "manufacturer" and exempts compounding, as specified from the definition.

THIS BILL WOULD:

1. Specify a hospital pharmacy may be located outside of a hospital on either the same premises or separate premises, located within 100 mile radius, which is regulated under a hospital's license.
2. Specify that these services can only be provided to its own patients who are either admitted or registered patients of a hospital within the same health care system.
3. Specify that unit-dose medication produced from a centralized pharmacy location for hospitals under common ownership must be barcoded to be readable at the patient's bedside.
4. Allow for anticipatory unit-dose packaging as specified to ensure continuity of patient care.
5. Exempt from the definition of manufacturing, repackaging of a drug for parenteral therapy, or oral therapy in a hospital for delivery to another pharmacy or hospital under common ownership for purposes of administering medication pursuant to a prescription order.
6. Require a pharmacy performing such services to notify the board in writing within 30 days of initiating prepackaging or compounding from a centralized location, as well as within 30 days of any change in the information.

AUTHOR'S INTENT:

According to the author, "technology is now capable of providing hospitals with a method to deliver barcoded unit-doses to in-patients' bedsides. However, the cost of this technology renders it virtually impossible for hospitals to do within the structures of the current hospital pharmacy. In addition, because the new central pharmacy would serve multiple hospitals (though the hospitals are under common ownership), currently lawful hospital pharmacy activities might run afoul of the manufacturing law." The author notes that the potential to finally and effectively address in-patient medication errors is greatly expanded by this proposal.

FISCAL IMPACT:

Any minor fiscal impact could be absorbed within existing resources.

COMMENTS:

Recent amendments to this measure clarify that the centralized pharmacy services can only be provided to its own patients who are either admitted or registered patients of a hospital within the same health care system.

This proposal appears consistent with the board's mission statement, "The Board of Pharmacy protects and promotes the health and safety of Californians by pursuing the highest quality of pharmacist's care and the appropriate use of pharmaceuticals through education, communication, licensing, legislation, regulation, and enforcement." This proposal would allow a hospital to leverage existing technology to prepare unit-dose medications that include barcoding technology that must be readable at the patient's bedside.

Over the years the board has evaluated the issue of medication errors and reviewed materials and heard presentations from experts on what can be done to reduce such errors. Barcoding technology has been identified as one tool that can be used to reduce medication errors. In 2004, the FDA established bar code label requirements for human drug and biological products (21 CFR Parts 201, 606, et al.) The FDA included in its guidance document, "Bar codes will allow health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is being given to the right patient at the right time. This new system is intended to help reduce the number of medication errors that occur in hospitals and health care settings." (Hospitals are exempt from the FDA requirement to barcode unit-dose packages.) In 2004, the FDA also noted that hospitals that were using bar coding at that time avoided 50% of the adverse drug events caused by errors in the distribution and administration of prescriptions.

A summary from a study published in 2006, "Medication Dispensing Errors and Potential Adverse Drug Events before and after Implementing Bar Code Technology in the Pharmacy, Poon et. Al," included:

"...our study results suggest that bar code technology in a hospital pharmacy may substantially reduce serious dispensing errors. In particular, it may target several types of dispensing errors that may frequently harm patients, including wrong medication, wrong dose, or wrong formulation errors. However, the scanning technology should be configured to ensure that all doses are scanned at least once during the dispensing

process. If optimally configured, this technology may be an important addition to the medication safety armamentarium.”

Further, a portion of the discussion from this study also included:

“The rates of target dispensing errors and potential ADEs substantially decreased after the implementation of bar code technology: The target dispensing error rate decreased by 85%, and the rate of all dispensing-related potential ADEs decreased by more than 60%.”

As this measure does not currently specify the requirements of the barcoding, the board may want to consider offering an amendment to clarify what information should be contained within barcode. The board may want to consider the FDA requirement elements established in 21 CFR Parts 201, 606, et al.

PREVIOUS LEGISLATION:

The board previously supported AB 1370 (Solorio, 2009) which contained provisions similar to this bill.

The board previously supported AB 2077 (Solorio, 2010) which contained provisions similar to this bill. This bill was vetoed by the governor.

“This bill potentially places vulnerable patients at risk of medication error or exposure to adulterated or misbranded drugs. Without maintaining strict adherence to federal Food and Drug Administration requirements, there is a greater likelihood of product mix-up, loss of product identity, contamination and cross-contamination, and lack of adequate control systems. Current law clearly outlines the regulatory oversight functions for the Department of Public Health and the Board of Pharmacy. I see no reason to change these well-defined regulatory roles in California.”

SUPPORT/OPPOSITION:

Support:

California Hospital Association (sponsor)
California Pharmacists Association
Antelope Valley Hospital
California Society of Health-System Pharmacists
Mercy General Hospital
Sharp
St. Joseph's Medical Center, Pharmacy Department
Touro University, College of Pharmacy
Individual Pharmacists

Opposition:

None of file

HISTORY:

Date Action

Apr. 26 From committee: Do pass and re-refer to Com. on APPR. with
recommendation: to consent calendar. (Ayes 9. Noes 0.) (April

Bill Analysis: AB 377 as amended

26). Re-referred to Com. on APPR.
 Apr. 25 Re-referred to Com. on B., P. & C.P.
 Apr. 14 From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended.
 Apr. 12 From committee: Do pass and re-refer to Com. on B., P. & C.P. (Ayes 19. Noes 0.) (April 12). Re-referred to Com. on B., P. & C.P.
 Mar. 7 Referred to Coms. on HEALTH and B., P. & C.P.
 Feb. 15 From printer. May be heard in committee March 17.
 Feb. 14 Read first time. To print.

April 18, 2011

Ms. Virginia Herold, Executive Officer
California Board of Pharmacy
1625 N Market Blvd, N219
Sacramento, CA 95834

RE: Request for Board of Pharmacy Support of Assembly Bill 377 (Solorio)

Dear Ms. Herold:

The California Society of Health-System Pharmacists (CSHP) is proud to convey our **STRONG SUPPORT** of **Assembly Bill (AB) 377 (Solorio)** along with the California Hospital Association. Both associations agree that AB 377 meets our shared objective to improve patient safety as the primary purpose behind AB 377 is to enhance the preparation and delivery of medications by facilitating the implementation of barcode-enabled point-of-care systems, including barcode medication administration (BCMA) and compounded sterile products.

Many medication errors in hospitals have resulted from inadequate and inconsistent labeling, and/or the lack of proper mechanisms, such as bar coding, to track medications through the distribution process to the patient. As such, CSHP recognizes that hospitals are moving towards the implementation of BCMA. At the most basic level, BCMA helps to verify that the right drug is being administered to the right patient, at the right dose, by the right route, and at the right time. Barcoding also facilitates the accurate placement of medications in automated drug cabinets used by most hospitals. Further, many smaller hospitals cannot afford to meet the physical requirements mandated to meet federal standards for sterile compounding environments. AB 377 would allow sterile compounding to be performed at a centralized pharmacy or a larger hospital that is more capable of producing these sterile admixtures for their sister hospitals under common ownership.

This bill would also increase the accuracy in which drugs are packaged as most medications are not available from the manufacturer in unit of use (unit dose), barcode labeled packages. The manufactures' lack of individually packaged and barcoded doses makes implementation of BCMA a challenge. These deficiencies in packaging and labeling are frequently overcome by manually packaging doses in the local pharmacy (with significant chance for error) or through expensive contract packaging services. Assuring that all medications are consistently packaged and labeled with barcode identification can be greatly facilitated by central compounding and packaging in anticipation of the needs of their owned pharmacies. A centralized pharmacy operations approach makes it more practical to take advantage of high speed automated equipment, economies of scale, and more quality controlled processes.

Currently, the equipment as well as medication distribution processes can be used in individual hospital pharmacies for their local needs, but not in a central licensed pharmacy location to serve the needs of commonly owned hospitals. The costs associated with such equipment and required space for this kind of operation is prohibitive for the majority of individual hospitals, but when feasible and implemented can safely provide BCMA and improve patient care.

This concept is nothing new to the Board of Pharmacy (board). In 2010, the board sponsored Assembly Bill 1370 and later took a position of support on Assembly Bill 2077 to allow for a centralized hospital packaging pharmacy. **This is an important patient safety issue and we strongly urge the board to take a position of support on AB 377 during the May 3-4, 2011 meeting in Newport Beach.**

Founded in 1962, CSHP represents over 4,000 pharmacists, student pharmacists, pharmacy technicians, and associates who serve patients and the public through the promotion of wellness and rational drug therapy. CSHP members practice in a variety of organized healthcare settings, including, but not limited to, hospitals, integrated healthcare systems, clinics, home healthcare and ambulatory care settings.



If you have any questions and/or comments, please do not hesitate to contact me or CSHP Director of Government Affairs Philip Swanger at (916) 447-1033 ext. 108 or philip@cshp.org.

Respectfully,

Dawn Benton
Executive Vice President/CEO

cc: Dorel Harms, Senior Vice President, California Hospital Association

ASSEMBLY BILL

No. 399

Introduced by Assembly Member Bonnie Lowenthal

February 14, 2011

An act to amend Section 5024.2 of the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

AB 399, as introduced, Bonnie Lowenthal. Corrections: offender pharmacies.

Existing law authorizes the Department of Corrections and Rehabilitation to maintain and operate a comprehensive pharmacy services program for those facilities under the jurisdiction of the department that may incorporate specified features, including a statewide pharmacy administration system with direct authority and responsibility for program administration and oversight, and a multidisciplinary, statewide Pharmacy and Therapeutics Committee with specified responsibilities.

This bill would, instead, require a comprehensive pharmacy services program to incorporate those specified features.

Existing law authorizes the department to operate and maintain a centralized pharmacy distribution center and states that the centralized pharmacy distribution center and institutional pharmacies should be licensed as pharmacies by the California State Board of Pharmacy and should meet all applicable regulations applying to a pharmacy.

This bill would, instead, require that the centralized pharmacy distribution center and institutional pharmacies be licensed as pharmacies by the California State Board of Pharmacy and meet all applicable regulations applying to a pharmacy.

Existing law states that the centralized pharmacy distribution center should maintain a system of quality control checks on each process used to package, label, and distribute medications, and that the department should ensure that there is a program providing for the regular inspection of all department pharmacies in the state to verify compliance with applicable laws, rules, regulations, and other standards as may be appropriate to ensure the health, safety, and welfare of the department's inmate patients.

This bill would, instead, require the centralized pharmacy distribution center to maintain a system of quality control checks on each process used to package, label, and distribute medications, and would require the department to ensure that there is a program providing for the regular inspection of all department pharmacies in the state to verify compliance with applicable laws, rules, regulations, and other standards as may be appropriate to ensure the health, safety, and welfare of the department's inmate patients.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5024.2 of the Penal Code is amended to
- 2 read:
- 3 5024.2. (a) The Department of Corrections and Rehabilitation
- 4 is authorized to maintain and operate a comprehensive pharmacy
- 5 services program for those facilities under the jurisdiction of the
- 6 department that is both cost effective and efficient, ~~and may that~~
- 7 *program shall* incorporate *all of* the following:
- 8 (1) A statewide pharmacy administration system with direct
- 9 authority and responsibility for program administration and
- 10 oversight.
- 11 (2) Medically necessary pharmacy services using professionally
- 12 and legally qualified pharmacists, consistent with the size and the
- 13 scope of medical services provided.
- 14 (3) Written procedures and operational practices pertaining to
- 15 the delivery of pharmaceutical services.
- 16 (4) A multidisciplinary, statewide Pharmacy and Therapeutics
- 17 Committee responsible for all of the following:
- 18 (A) Developing and managing a department formulary.

1 (B) Standardizing the strengths and dosage forms for
2 medications used in department facilities.

3 (C) Maintaining and monitoring a system for the review and
4 evaluation of corrective actions related to errors in prescribing,
5 dispensing, and administering medications.

6 (D) Conducting regular therapeutic category reviews for
7 medications listed in the department formulary.

8 (E) Evaluating medication therapies and providing input to the
9 development of disease management guidelines used in the
10 department.

11 (5) A requirement for the use of generic medications, when
12 available, unless an exception is reviewed and approved in
13 accordance with an established nonformulary approval process.

14 (6) Use of an enterprise-based pharmacy operating system that
15 provides management with information on prescription workloads,
16 medication utilization, prescribing data, and other key pharmacy
17 information.

18 (b) The department is authorized to operate and maintain a
19 centralized pharmacy distribution center to provide advantages of
20 scale and efficiencies related to medication purchasing, inventory
21 control, volume production, drug distribution, workforce utilization,
22 and increased patient safety. ~~It is the intent of the Legislature that~~
23 ~~the~~ *The* centralized pharmacy distribution center and institutional
24 pharmacies *shall* be licensed as pharmacies by the California State
25 Board of Pharmacy—~~meeting and shall meet~~ all applicable
26 regulations applying to a pharmacy.

27 (1) To the extent it is cost effective and efficient, the centralized
28 pharmacy distribution center should include systems to do the
29 following:

30 (A) Order and package bulk pharmaceuticals and prescription
31 and stock orders for all department correctional facilities.

32 (B) Label medications as required to meet state and federal
33 prescription requirements.

34 (C) Provide barcode validation matching the drug to the specific
35 prescription or floor stock order.

36 (D) Sort completed orders for shipping and delivery to
37 department facilities.

38 (2) Notwithstanding any other requirements, the department
39 centralized pharmacy distribution center is authorized to do the
40 following:

1 (A) Package bulk pharmaceuticals into both floor stock and
2 patient-specific packs.

3 (B) Reclaim, for reissue, unused and unexpired medications.

4 (C) Distribute the packaged products to department facilities
5 for use within the state corrections system.

6 (3) The centralized pharmacy distribution center ~~should~~ *shall*
7 maintain a system of quality control checks on each process used
8 to package, label, and distribute medications. The quality control
9 system may include a regular process of random checks by a
10 licensed pharmacist.

11 (c) The department may investigate and initiate potential
12 systematic improvements in order to provide for the safe and
13 efficient distribution and control of, and accountability for, drugs
14 within the department's statewide pharmacy administration system,
15 taking into account factors unique to the correctional environment.

16 (d) The department ~~should~~ *shall* ensure that there is a program
17 providing for the regular inspection of all department pharmacies
18 in the state to verify compliance with applicable law, rules,
19 regulations, and other standards as may be appropriate to ensure
20 the health, safety, and welfare of the department's inmate patients.

21 (e) On March 1, 2012, and each March 1 thereafter, the
22 department shall report all of the following to the Joint Legislative
23 Budget Committee, the Senate Committee on Appropriations, the
24 Senate Committee on Budget and Fiscal Review, the Senate
25 Committee on Health, the Senate Committee on Public Safety, the
26 Assembly Committee on Appropriations, the Assembly Committee
27 on Budget, the Assembly Committee on Health, and the Assembly
28 Committee on Public Safety:

29 (1) The extent to which the Pharmacy and Therapeutics
30 Committee has been established and achieved the objectives set
31 forth in this section, as well as the most significant reasons for
32 achieving or not achieving those objectives.

33 (2) The extent to which the department is achieving the objective
34 of operating a fully functioning and centralized pharmacy
35 distribution center, as set forth in this section, that distributes
36 pharmaceuticals to every adult prison under the jurisdiction of the
37 department, as well as the most significant reasons for achieving
38 or not achieving that objective.

1 (3) The extent to which the centralized pharmacy distribution
2 center is achieving cost savings through improved efficiency and
3 distribution of unit dose medications.

4 (4) A description of planned or implemented initiatives to
5 accomplish the next 12 months' objectives for achieving the goals
6 set forth in this section, including a fully functioning and
7 centralized pharmacy distribution center that distributes
8 pharmaceuticals to every adult facility under the jurisdiction of
9 the department.

10 (5) The costs for prescription pharmaceuticals for the previous
11 fiscal year, both statewide and at each adult prison under the
12 jurisdiction of the department, and a comparison of these costs
13 with those of the prior fiscal year.

14 (f) The requirement for submitting a report imposed under
15 subdivision (e) is inoperative on March 1, 2016, pursuant to Section
16 10231.5 of the Government Code.

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 399

VERSION: As Introduced February 14, 2011

AUTHOR: Lowenthal

**SPONSOR: The American Federation of State,
County and Municipal Employees, AFL-CIO**

COMMITTEE RECOMMENDED POSITION: Support

SUBJECT: Corrections: offender pharmacies

Affected Sections: Amend Section 5024.2 of the Penal Code

CURRENT STATUS: Assembly Health Committee hearing for May 3, 2011

EXISTING LAW:

1. Specifies that the Department of Corrections and rehabilitation is authorized to maintain and operate a comprehensive pharmacy services program for facilities under its jurisdiction.
2. Specifies that the program shall incorporate all of the following:
 - Statewide pharmacy administration system with direct authority and responsibility for program administration and oversight.
 - Use qualified pharmacists, consistent with the size and scope of the medical services provided.
 - Have written procedures and practices pertaining to the delivery of pharmaceutical services.
 - Have a statewide Pharmacy and Therapeutics Committee responsible for:
 - Developing and managing a department formulary
 - Standardizing the strengths and dosage forms used
 - Maintaining and monitoring the review and corrective actions relating to errors
 - Conducting regular review of department formulary
 - Use of generic medications, unless an exception is reviewed and approved.
 - Use of an enterprise-based pharmacy operating system that provides management with prescription workloads, medication utilization, prescribing date and other information.
3. Allows the department to operate and maintain a centralized pharmacy distribution center and states the intention of the legislation that the pharmacy be licensed by the board.

4. Established the requirements of the centralized pharmacy distribution center to include the following:
 - Order and package bulk pharmaceuticals and prescription and stock orders for all department correctional facilities
 - Label medications as required by law.
 - Provide barcode validation matching the drug to the prescription or floor stock order.
 - Sort completed orders for shipping and delivery.
5. Allows for the reissue of unused and unexpired medications.
6. Specifies that the centralized pharmacy distribution center should maintain a quality control check.
7. Requires the department to investigate and initiate potential systematic improvements.
8. Establishes reporting requirements as specified and sunsets this requirement on March 1, 2016.

THIS BILL WOULD:

Maintain all of the same provisions above, however would make certain portions mandatory and removes intent language. Specifically,

1. The centralized pharmacy distribution center and institutional pharmacies shall be licensed as pharmacies by the board and shall meet all applicable regulations.
2. The center shall maintain a system of quality control checks on each process used,
3. The department shall ensure that there is a program providing for regular inspection of all department pharmacies in the state to verify compliance.

AUTHOR'S INTENT:

To strengthen the protocols in existing law and require California Department of Corrections and Rehabilitation to fully implement a comprehensive pharmacy services program.

FISCAL IMPACT:

We anticipate a portion of an inspector personnel year (PY) will be necessary to ensure compliance with these provisions. This workload can be absorbed if the board is able to fill all authorized inspector positions.

PREVIOUS LEGISLATION:

AB 2747 (B. Lowenthal, 2010) was introduced to codify the overhaul of the pharmacy system for the California Department of Corrections and Rehabilitation and required the department to operate a comprehensive pharmacy services program, including a centralized pharmacy distribution center. This bill was vetoed. However, the 2010-11 Budget trailer bill incorporated many of the provisions of AB 2747.

SUPPORT/OPPOSITION

Unknown

HISTORY:

Date	Action
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Apr. 12	From committee: Do pass and re-refer to Com. on HEALTH with recommendation: to consent calendar. (Ayes 9. Noes 0.) (April 12). Re-referred to Com. on HEALTH.
Mar. 25	Referred to Coms. on B., P. & C.P. and HEALTH.
Feb. 15	From printer. May be heard in committee March 17.
Feb. 14	Read first time. To print.

ASSEMBLY BILL

No. 847

Introduced by Assembly Member Bonnie Lowenthal

February 17, 2011

An act to amend Sections 4190 and 4195 of, and to amend the heading of Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of, the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 847, as introduced, Bonnie Lowenthal. Pharmacy: clinics.

Existing law, the Pharmacy Law, provides for the licensure and regulation of the practice of pharmacy by the California State Board of Pharmacy and makes a knowing violation of its provisions a crime. Existing law authorizes a surgical clinic, as defined, to purchase drugs at wholesale for administration or dispensing, under the direction of a physician and surgeon, to patients registered for care at the surgical clinic. Existing law requires these surgical clinics to obtain a license from the board and to comply with various regulatory requirements, and requires a surgical clinic to maintain specified records. Existing law authorizes the board to inspect a surgical clinic at any time in order to determine whether a surgical clinic is operating in compliance with certain requirements.

This bill would expand these provisions to additionally authorize an outpatient setting or an ambulatory surgical center, as specified, to purchase drugs at wholesale for administration or dispensing, subject to the requirements applicable to surgical clinics. The bill would delete the requirement that a clinic operating under these provisions be licensed by the California State Board of Pharmacy and would make that

licensure optional. The bill would specify that the board is authorized to inspect only a clinic that is licensed by the board.

Because a knowing violation of these requirements by outpatient settings and ambulatory surgical centers would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The heading of Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of the Business and Professions Code is amended to read:

Article 14. ~~Surgical~~ Clinics

SEC. 2. Section 4190 of the Business and Professions Code is amended to read:

4190. (a) *For the purposes of this article, "clinic" means a surgical clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code, an outpatient setting accredited by an accreditation agency, as defined in Section 1248 of the Health and Safety Code, or an ambulatory surgical center certified to participate in the Medicare Program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.).*

(a)

(b) Notwithstanding any provision of this chapter, a ~~surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code~~ clinic may purchase drugs at wholesale for administration or dispensing, under the direction of a physician *and surgeon*, to patients registered for care at the clinic, as provided in subdivision ~~(b)~~. (c) The clinic shall keep records of the kind and amounts of drugs purchased, administered, and dispensed, and the records shall be available and maintained for

1 a minimum of three years for inspection by all properly authorized
2 personnel.

3 ~~(b)~~

4 (c) The drug distribution service of a ~~surgical~~ clinic shall be
5 limited to the use of drugs for administration to the patients of the
6 ~~surgical~~ clinic and to the dispensing of drugs for the control of
7 pain and nausea for patients of the clinic. Drugs shall not be
8 dispensed in an amount greater than that required to meet the
9 patient's needs for 72 hours. Drugs for administration shall be
10 those drugs directly applied, whether by injection, inhalation,
11 ingestion, or any other means, to the body of a patient for his or
12 her immediate needs.

13 ~~(e) No surgical clinic shall operate without a license issued by~~
14 ~~the board nor shall it be entitled to the benefits of this section until~~
15 ~~it has obtained a license from the board. A~~

16 (d) A clinic may, at its option, apply for a license issued by the
17 board pursuant to this section.

18 (e) If a clinic elects to obtain a license pursuant to subdivision
19 (d), a separate license shall be required for each clinic location. A
20 clinic licensed by the board shall notify the board of any change
21 in the clinic's address on a form furnished by the board.

22 ~~(d) Any~~

23 (f) If a clinic is licensed by the board, any proposed change in
24 ownership or beneficial interest in the licensee shall be reported
25 to the board, on a form to be furnished by the board, at least 30
26 days prior to the execution of any agreement to purchase, sell,
27 exchange, gift or otherwise transfer any ownership or beneficial
28 interest or prior to any transfer of ownership or beneficial interest,
29 whichever occurs earlier.

30 (g) Nothing in this section shall limit the ability of a physician
31 and surgeon or a group medical practice to prescribe, dispense,
32 administer, or furnish drugs at a clinic or surgical clinic as
33 provided in Sections 2241.5, 2242, and 4170.

34 SEC. 3. Section 4195 of the Business and Professions Code is
35 amended to read:

36 4195. The board shall have the authority to inspect a clinic *that*
37 *is licensed pursuant to this article* at any time in order to determine
38 whether ~~a the~~ clinic is, or is not, operating in compliance with this
39 article and all other provisions of the law.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 847

VERSION: As Introduced February 17, 2011

AUTHOR: Lowenthal

SPONSOR: Long Beach Endoscopy Center

COMMITTEE RECOMMENDED POSITION: Oppose Unless Amended

SUBJECT: Pharmacy: clinics

Affected Sections: Amend Sections 4190 and 4195 of the Business and Professions Code

CURRENT STATUS: Referred to Assembly Health, but a hearing date has not been set.

EXISTING LAW:

1. Defines a surgical clinic as a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. Provides that no surgical clinic licensed pursuant to Section 1204 of the Health and Safety Code may purchase drugs at wholesale or maintain a commingled drug stock unless licensed by the California State Board of Pharmacy.
2. Defines the licensing requirements for the board to issue a clinic license to surgical clinic.

THIS BILL WOULD:

1. Expand the definition of a surgical clinic Section 4190 to include:
 - licensure by the Department of Public Health (DPH) under H&SC Section 1204
 - an outpatient setting accredited by an approved agency as defined in 1248 of the Health and Safety Code
 - an ambulatory surgical center certified to participate in the Medicare Program
2. Authorize any of the clinics referenced above to purchase drugs at wholesale as specified.
3. Make licensure with the board optional.
4. Require notification to the board of any changes in ownership for any clinic licensed by the board.
5. Specify that nothing in the section will limit the ability of a physician and surgeon or a group medical practice to prescribe, dispense, administer or furnish drugs at a clinic.

6. Specify that the board has authority to inspect any clinic that is licensed by the board.

AUTHOR'S INTENT:

The author notes that most clinics and their surgeons cannot be expected to operate their own "individual" pharmacy and continue to provide the high quality, low cost care patients and the system rely on. As a result, patient access to these clinics will be compromised.

FISCAL IMPACT:

Any minor fiscal impact could be absorbed within existing resources.

COMMENTS:

Current law allows the board to issue a clinic license only to an entity licensed under H&S Code section 1204. The board's license allows a clinic to purchase drugs at wholesale as well as allows for a common drug supply from which prescribers may dispense. To ensure the appropriate regulation of this common drug supply, the clinic must provide the board with the name of the professional director and specifies that this person is responsible for the safe, orderly and lawful provisions of pharmacy law. In addition, the professional director is also required to retain a consulting pharmacist who is responsible for approving the policies and procedures in conjunction with the director.

This bill will expand these provisions to allow clinics that are able to purchase drugs at wholesale and dispense from a common drug stock. However because licensure with the board is optional, none of the oversight that currently exists would apply. This would be true even for surgical clinics that are currently licensed by the board. From a consumer protection standpoint, the change could result in a significant deficiency in that no person would be responsible for ensuring the safety of the drugs being used in such a clinic.

In response to a lawsuit that the California Department of Public Health was involved in regarding the regulation of a physician-owned ambulatory surgical clinic, several legislative remedies have been offered. Past remedies have generally expanded the conditions for licensure to allow the board to license surgical clinics that participate in the Medicare Program as well as those that were accredited by an approved agency. A summary of the lawsuit is provided below.

The California Court of Appeal interpreted the Health and Safety Code exclusion highlighted above to "...exclude physician owned and operated surgical clinics from licensing by the Department, leaving them, when using general anesthesia, to accreditation and regulation by the Medical Board." (*Capen v. Shewry* (2007) 155 Cal.App.4th 378, 384-385.) In short, this ruling means that ambulatory

surgical clinics owned and operated by physicians do not qualify as “surgical clinics” within the meaning of Health and Safety Code section 1204(b)(1).

Consequently, pursuant to the “*Capen* decision,” the California Department of Public Health (CDPH) no longer issues their licenses to physician-owned (either in whole or in part) ambulatory surgical clinics. Although the Court opined that the Medical Board was the appropriate regulator of these physician-owned clinics, the Medical Board does not have statutory authority to regulate these facilities, only the physicians practicing in them. The Medical Board only has authority to approve the agencies that accredit outpatient surgery centers where general anesthesia will be used. (Business and Professions Code section 2216; Health and Safety Code section 1248.1.)

As a result of the ruling, the California State Board of Pharmacy could no longer issue permits to ambulatory surgical clinics (ASCs) with physician ownership.

PREVIOUS LEGISLATION

AB 2292 (Lowenthal) of 2010 contained provisions that would have expanded the conditions under which the board can issue a clinic license including surgical clinics licensed by the Department of Public Health, those certified to participate in the Medicare Program and those accredited by an approved agency. The board had a support position on this bill that was subsequently vetoed by Governor Schwarzenegger with the following veto message.

“This bill potentially places vulnerable patients at risk of medication error or exposure to adulterated or misbranded drugs. Without maintaining strict adherence to federal Food and Drug Administration requirements, there is a greater likelihood of product mix-up, loss of product identity, contamination and cross-contamination, and lack of adequate control systems. Current law clearly outlines the regulatory oversight functions for the Department of Public Health and the Board of Pharmacy. I see no reason to change these well-defined regulatory roles in California.”

AB 1574 (Plescia) of 2008 contained similar provisions to those proposed in AB 2077 and would have required the Board to inspect outpatient settings and ASCs within 120 days of issuing a clinic license and then at least annually thereafter. AB 1574 was vetoed by Governor Schwarzenegger who stated that the bill failed to address the larger issue concerning the Capen v. Shewry ruling. The board had a support position on this bill.

AB 2122 (Plescia) of 2008 would have required surgical clinics to meet prescribed licensing requirements and standards, including compliance with Medicare conditions of participation, and also contained provisions nearly identical to those proposed in AB 1574. AB 2122 died in Assembly Appropriations Committee. The board did not have a position on this bill.

AB 543 (Plescia) of 2007 also would have required surgical clinics to meet specified operating and staffing standards, to limit surgical procedures, as specified, and to develop and implement policies and procedures consistent with Medicare conditions of participation, including interpretive guidelines. AB 543 was vetoed by Governor Schwarzenegger who, stated that the bill did not establish appropriate time limits for performing surgery under general anesthesia, inappropriately restricted administrative flexibility, and created fiscal pressure during ongoing budget challenges. The board had a support position on this bill.

AB 2308 (Plescia) of 2006 – This bill was vetoed by the governor. The veto message stated. “While I recognize the need for the Department of Health Services to develop clear licensing standards for surgical clinics, I am unable to support Assembly Bill 2308 because it does not establish such standards, but rather statutorily mandates creation of another advisory committee and provides an unrealistic timeframe to operate within. I am directing the Department of Health Services to work with stakeholders to develop standards that will effectively promote quality care in these facilities and to pursue legislation, as needed, to provide licensing standards for surgical clinics in a timely manner.” The board had no position on this bill.

SUPPORT/OPPOSITION

Unknown

HISTORY:

Date	Action
Mar. 10	Referred to Coms. on HEALTH and B., P. & C.P.
Feb. 18	From printer. May be heard in committee March 20.
Feb. 17	Read first time. To print.

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 632

Introduced by Senator Emmerson

February 18, 2011

~~An act to amend Section 4037 of the Business and Professions Code,~~
An act to add Section 4052.6 to the Business and Professions Code,
relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 632, as amended, Emmerson. Pharmacy.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy. ~~Existing law defines the term "pharmacy" for the purposes of these provisions.~~ *A violation of the law is a crime. Existing law authorizes a pharmacist filling a prescription order for a drug product prescribed by the trade or brand name to substitute a generic drug product, subject to specified requirements. Existing law also authorizes a pharmacist filling a prescription order for a drug product to select a different form of medication with the same active chemical ingredients, as specified, if certain requirements are met.*

~~This bill would make a technical, nonsubstantive change to that provision.~~ *prohibit a pharmacist from interchanging or substituting an opioid analgesic drug, as defined, for an opioid analgesic drug incorporating a tamper resistant technology, as defined, unless the opioid analgesic drug to be interchanged or substituted is described on a list to be prepared by the board. In those situations where the drug is not on the board's list, the bill would require the pharmacist to obtain consent from the prescriber prior to an interchange or substitution. The bill would make findings and declarations in that regard. Because*

a violation of these requirements by a pharmacist would constitute a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Opioid use and abuse has increased greatly in the United*
4 *States since the 1990s and continues to rise. While the benefits of*
5 *these products in treating and managing pain are widely*
6 *recognized, the potential for misuse and abuse of these products*
7 *has long been a concern of manufacturers, federal and state law*
8 *enforcement, health care providers, legislators, and regulators.*

9 *(b) Studies show that addicts tend to crush or otherwise break*
10 *down time-released products into a form that can be snorted or*
11 *injected for a more intense high. Thus, formulations that make it*
12 *more difficult to crush or otherwise manipulate those products*
13 *may mitigate the potential for abuse.*

14 *(c) Pharmaceutical manufacturers have invested enormous*
15 *research and development resources in both creating novel*
16 *technologies that may help deter the inappropriate use of opioid*
17 *medications and testing those products against other opioid*
18 *formulations.*

19 *(d) The United States Food and Drug Administration (FDA)*
20 *has afforded priority review to new drug applications for opioids*
21 *incorporating tamper resistant technologies. However, the FDA*
22 *has been reluctant to permit claims that those products actually*
23 *mitigate the potential for abuse without additional research.*
24 *Companies continue to develop post approval data in the overall*
25 *patient population; however, that effort will take many years.*
26 *Products incorporating tamper resistant technologies can play an*
27 *important role today in offering health care providers the*

1 *opportunity to prescribe products incorporating tamper resistant*
2 *technologies that provide advantages in reducing the potential for*
3 *misuse and abuse of opioids.*

4 *(e) Given the critically important public health and law*
5 *enforcement goals of preventing the abuse and misuse of opioids,*
6 *the Legislature should approve policies that encourage*
7 *manufacturers to develop opioid products with tamper resistant*
8 *technologies and promote efficient use of scarce health care*
9 *resources.*

10 *(f) Health care providers should have the ability to write*
11 *prescriptions for opioid products incorporating tamper resistant*
12 *technologies when, in their medical judgment, those prescriptions*
13 *are medically necessary.*

14 *SEC. 2. Section 4052.6 is added to the Business and Professions*
15 *Code, to read:*

16 *4052.6. (a) For the purposes of this section, the following*
17 *definitions shall apply:*

18 *(1) "Opioid analgesic drug" means a drug in the opioid*
19 *analgesic drug class prescribed to treat moderate to severe pain*
20 *or other conditions, whether in immediate release or extended*
21 *release form and whether or not combined with other drug*
22 *substances to form a single tablet or other dosage form.*

23 *(2) "Opioid analgesic drug incorporating a tamper resistant*
24 *technology" means an opioid analgesic drug listed as such by the*
25 *board pursuant to subdivision (b).*

26 *(b) (1) For the purposes of carrying out the provisions*
27 *described in subdivision (c), the board shall create a list of opioid*
28 *analgesic drugs that incorporate a tamper resistant technology.*
29 *A drug shall not be included on the list unless the following*
30 *requirements are satisfied:*

31 *(A) The drug manufacturer or distributor submits evidence to*
32 *the board that the opioid analgesic drug incorporates a tamper*
33 *resistant technology.*

34 *(B) The opioid analgesic drug has been approved by the United*
35 *States Food and Drug Administration (FDA) pursuant to an*
36 *application that includes at least one human tampering or abuse*
37 *potential study or a laboratory study comparing the tamper or*
38 *abuse resistant properties of the drug to one or more opioid*
39 *analgesic drugs that have been approved by the FDA and serve*
40 *as a positive control.*

(2) *The list shall include a determination by the board as to which opioid analgesic drugs incorporating tamper resistant technologies provide substantially similar tamper resistant properties, based solely upon studies submitted by the drug manufacturer.*

(3) *Nothing in this subdivision shall be construed to require that a drug included on the list bear a labeling claim with respect to reduction of tampering, abuse, or abuse potential at the time of listing.*

(c) (1) *Notwithstanding Sections 4052.5 and 4073, a pharmacist shall not interchange or substitute an opioid analgesic drug, brand, or generic, for an opioid analgesic drug incorporating a tamper resistant technology unless the opioid analgesic drug that is interchanged or substituted is included on the list described in subdivision (b).*

(2) *If the opioid analgesic drug is not on the list described in subdivision (b), the pharmacist shall obtain consent from the prescribing physician and surgeon prior to an interchange or substitution. The consent may be obtained by telephone or through any other electronic communication.*

SEC. 3. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

SECTION 1. ~~Section 4037 of the Business and Professions Code is amended to read:~~

~~4037. (a) "Pharmacy" shall mean an area, place, or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded. "Pharmacy" includes, but is not limited to, any area, place, or premises described in a license issued by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous~~

1 ~~drugs, or dangerous devices are furnished, sold, or dispensed at~~
2 ~~retail.~~

3 (b) ~~“Pharmacy” shall not include any area in a facility licensed~~
4 ~~by the State Department of Public Health where floor supplies,~~
5 ~~ward supplies, operating room supplies, or emergency room~~
6 ~~supplies of dangerous drugs or dangerous devices are stored or~~
7 ~~possessed solely for treatment of patients registered for treatment~~
8 ~~in the facility or for treatment of patients receiving emergency care~~
9 ~~in the facility.~~

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**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: SB 632

VERSION: As Amended March 24, 2011

AUTHOR: Emmerson

SPONSOR: Endo Pharmaceuticals

BOARD POSITION: None

SUBJECT: Pharmacy

Affected Sections: Add Section 4052.6 of the Business and Professions Code

CURRENT STATUS: Senate Business, Professions and Economic Development
Committee hearing scheduled for May 2, 2011.

EXISTING LAW:

1. Provides for the licensure and regulation of pharmacists and pharmacies by the board.
2. Authorizes a pharmacist filling a prescription order to select another drug product with the same active ingredients, strength, quantity and dosage form within specified parameters.
 - a. Prohibits such substitution if the prescriber indicates "do not substitute" or other words conveying a similar meaning.

THIS BILL WOULD:

1. Make findings and declarations about opioid use and abuse, state that the legislature should approve policies that encourage manufacturers to develop opioid productions with tamper resistant technologies and specify the health care providers should have the ability to write prescriptions for opioid products that incorporate tamper resistant technologies.
2. Establish the following definitions for purposes of this section:
 - a. "Opioid analgesic drug" means a drug in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions, whether in the immediate release or extended release form and whether or not combined with other drug substances to form a single tablet or other dosage form.
 - b. "Opioid analgesic drug incorporating a tamper resistance technology" means an opioid drug listed as such by the board pursuant.
 - c. Require the board to create a list of opioid analgesic drugs that incorporate tamper resistant technology

- i. Specifies that a drug shall not be included on the list unless the following requirements are met:
 - 1. The drug manufacturer or distributor submits evidence to the that board the drug incorporates such technology
 - 2. The drug has been approved by the FDA and the application to the FDA includes at least one human tampering or abuse potential study
 - d. Specify that a pharmacist would be prohibited from substituting a drug that is prescribed and included on this list, unless the pharmacist obtains prior consent.

FISCAL IMPACT:

Because this measure would require the board to evaluate manufacturer study(ies) to determine which FDA approved drugs satisfy the tamper-proof standard, the board would need to contract with at least on expert, most likely a pharmacologist or scientist, to perform this evaluation. Other costs associated with maintaining the list and educating pharmacists about these provisions could be absorbed within existing resources.

SUPPORT and OPPOSITION:

Unknown

HISTORY:

Date	Action
Apr. 12	Set for hearing May 2.
Apr. 11	Set, second hearing. Hearing canceled at the request of author.
Apr. 8	Set for hearing April 25.
Apr. 7	Set, first hearing. Hearing canceled at the request of author.
Apr. 1	Set for hearing April 11.
Mar. 31	Re-referred to Com. on B., P. & E.D.
Mar. 24	From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.
Mar. 3	Referred to Com. on RLS.
Feb. 20	From printer. May be acted upon on or after March 22.
Feb. 18	Introduced. Read first time. To Com. on RLS. for assignment. To print.

Attachment 3

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 507

Introduced by Assembly Member Hayashi

February 15, 2011

An act to amend Section 4301 of the Business and Professions Code, and to amend Sections 124960 and 124961 of, and to repeal Section 11453 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as amended, Hayashi. Pain management.

(1) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists and pharmacy technicians by the California State Board of Pharmacy.

Existing law requires the board to take action against any holder of a license who is guilty of unprofessional conduct, as defined, including, but not limited to, the clearly excessive furnishing of controlled substances in violation of prescribed statutory provisions relating to the prescription of controlled substances by a practitioner, as defined.

This bill would remove the above requirement that the furnishing of the controlled substances be clearly excessive and would instead provide that unprofessional conduct includes any furnishing of controlled substances in violation of those prescribed provisions relating to the prescription of controlled substances by a practitioner.

(+)

(2) Existing law authorizes the Department of Justice to employ a physician to interview and examine any patient in connection with the prescription, possession, or use of a controlled substance, requires the patient to submit to the interview and examination, and authorizes the physician to testify in prescribed administrative proceedings.

This bill would repeal that provision.

(2)

(3) Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California, and the violation of specified provisions of the act is a crime. Existing law authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition, drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

This bill would conform findings and declarations and other references to severe chronic intractable pain and to the California Intractable Pain Treatment Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4301 of the Business and Professions
2 Code is amended to read:
3 4301. The board shall take action against any holder of a license
4 who is guilty of unprofessional conduct or whose license has been
5 procured by fraud or misrepresentation or issued by mistake.
6 Unprofessional conduct shall include, but is not limited to, any of
7 the following:
8 (a) Gross immorality.
9 (b) Incompetence.
10 (c) Gross negligence.
11 (d) ~~The clearly excessive~~ furnishing of controlled substances
12 in violation of subdivision (a) of Section 11153 of the Health and
13 Safety Code.
14 (e) The clearly excessive furnishing of controlled substances in
15 violation of subdivision (a) of Section 11153.5 of the Health and
16 Safety Code. Factors to be considered in determining whether the
17 furnishing of controlled substances is clearly excessive shall

1 include, but not be limited to, the amount of controlled substances
2 furnished, the previous ordering pattern of the customer (including
3 size and frequency of orders), the type and size of the customer,
4 and where and to whom the customer distributes its product.

5 (f) The commission of any act involving moral turpitude,
6 dishonesty, fraud, deceit, or corruption, whether the act is
7 committed in the course of relations as a licensee or otherwise,
8 and whether the act is a felony or misdemeanor or not.

9 (g) Knowingly making or signing any certificate or other
10 document that falsely represents the existence or nonexistence of
11 a state of facts.

12 (h) The administering to oneself, of any controlled substance,
13 or the use of any dangerous drug or of alcoholic beverages to the
14 extent or in a manner as to be dangerous or injurious to oneself,
15 to a person holding a license under this chapter, or to any other
16 person or to the public, or to the extent that the use impairs the
17 ability of the person to conduct with safety to the public the practice
18 authorized by the license.

19 (i) Except as otherwise authorized by law, knowingly selling,
20 furnishing, giving away, or administering, or offering to sell,
21 furnish, give away, or administer, any controlled substance to an
22 addict.

23 (j) The violation of any of the statutes of this state, of any other
24 state, or of the United States regulating controlled substances and
25 dangerous drugs.

26 (k) The conviction of more than one misdemeanor or any felony
27 involving the use, consumption, or self-administration of any
28 dangerous drug or alcoholic beverage, or any combination of those
29 substances.

30 (l) The conviction of a crime substantially related to the
31 qualifications, functions, and duties of a licensee under this chapter.
32 The record of conviction of a violation of Chapter 13 (commencing
33 with Section 801) of Title 21 of the United States Code regulating
34 controlled substances or of a violation of the statutes of this state
35 regulating controlled substances or dangerous drugs shall be
36 conclusive evidence of unprofessional conduct. In all other cases,
37 the record of conviction shall be conclusive evidence only of the
38 fact that the conviction occurred. The board may inquire into the
39 circumstances surrounding the commission of the crime, in order
40 to fix the degree of discipline or, in the case of a conviction not

1 involving controlled substances or dangerous drugs, to determine
2 if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter.
4 A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere is deemed to be a conviction within the meaning of
6 this provision. The board may take action when the time for appeal
7 has elapsed, or the judgment of conviction has been affirmed on
8 appeal or when an order granting probation is made suspending
9 the imposition of sentence, irrespective of a subsequent order under
10 Section 1203.4 of the Penal Code allowing the person to withdraw
11 his or her plea of guilty and to enter a plea of not guilty, or setting
12 aside the verdict of guilty, or dismissing the accusation,
13 information, or indictment.

14 (m) The cash compromise of a charge of violation of Chapter
15 13 (commencing with Section 801) of Title 21 of the United States
16 Code regulating controlled substances or of Chapter 7
17 (commencing with Section 14000) of Part 3 of Division 9 of the
18 Welfare and Institutions Code relating to the Medi-Cal program.
19 The record of the compromise is conclusive evidence of
20 unprofessional conduct.

21 (n) The revocation, suspension, or other discipline by another
22 state of a license to practice pharmacy, operate a pharmacy, or do
23 any other act for which a license is required by this chapter.

24 (o) Violating or attempting to violate, directly or indirectly, or
25 assisting in or abetting the violation of or conspiring to violate any
26 provision or term of this chapter or of the applicable federal and
27 state laws and regulations governing pharmacy, including
28 regulations established by the board or by any other state or federal
29 regulatory agency.

30 (p) Actions or conduct that would have warranted denial of a
31 license.

32 (q) Engaging in any conduct that subverts or attempts to subvert
33 an investigation of the board.

34 (r) The selling, trading, transferring, or furnishing of drugs
35 obtained pursuant to Section 256b of Title 42 of the United States
36 Code to any person a licensee knows or reasonably should have
37 known, not to be a patient of a covered entity, as defined in
38 paragraph (4) of subsection (a) of Section 256b of Title 42 of the
39 United States Code.

(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by Section 56 and following of the Civil Code. For purposes of this section, “long-term care facility” shall have the same meaning given the term in Section 1418 of the Health and Safety Code.

SECTION 1.

SEC. 2. Section 11453 of the Health and Safety Code is repealed.

~~**SEC. 2.**~~

SEC. 3. Section 124960 of the Health and Safety Code is amended to read:

124960. The Legislature finds and declares all of the following:

(a) The state has a right and duty to control the illegal use of opiate drugs.

(b) Inadequate treatment of acute and chronic pain originating from cancer or noncancerous conditions is a significant health problem.

(c) For some patients, pain management is the single most important treatment a physician can provide.

(d) A patient suffering from pain or a condition causing pain, including, but not limited to, intractable pain should have access to proper treatment of his or her pain.

(e) Due to the complexity of their problems, many patients suffering from pain or a condition causing pain, including, but not limited to, intractable pain may require referral to a physician with

1 expertise in the treatment of pain or a condition causing pain,
2 including, but not limited to, intractable pain. In some cases, pain
3 or a condition causing pain, including, but not limited to, intractable
4 pain is best treated by a team of clinicians in order to address the
5 associated physical, psychological, social, and vocational issues.

6 (f) In the hands of knowledgeable, ethical, and experienced pain
7 management practitioners, opiates administered for pain or a
8 condition causing pain, including, but not limited to, intractable
9 pain can be safe.

10 (g) Opiates can be an accepted treatment for patients in pain or
11 a condition causing pain, including, but not limited to, intractable
12 pain who have not obtained relief from any other means of
13 treatment.

14 (h) A patient suffering from pain or a condition causing pain,
15 including, but not limited to, intractable pain has the option to
16 request or reject the use of any or all modalities to relieve his or
17 her pain.

18 (i) A physician treating a patient who suffers from pain or a
19 condition causing pain, including, but not limited to, intractable
20 pain may prescribe a dosage deemed medically necessary to relieve
21 pain as long as the prescribing is in conformance with Section
22 2241.5 of the Business and Professions Code.

23 (j) A patient who suffers from pain or a condition causing pain,
24 including, but not limited to, intractable pain, has the option to
25 choose opiate medication for the treatment of the severe chronic
26 intractable pain as long as the prescribing is in conformance with
27 the provisions of Section 2241.5 of the Business and Professions
28 Code.

29 (k) The patient's physician may refuse to prescribe opiate
30 medication for a patient who requests the treatment for pain or a
31 condition causing pain, including, but not limited to, intractable
32 pain. However, that physician shall refer the patient to physicians
33 who treat pain or a condition causing pain, including, but not
34 limited to, intractable pain with methods that include the use of
35 opiates.

36 ~~SEC. 3.~~

37 *SEC. 4.* Section 124961 of the Health and Safety Code is
38 amended to read:

39 124961. Nothing in this section shall be construed to alter any
40 of the provisions set forth in Section 2241.5 of the Business and

1 Professions Code. This section shall be known as the Pain Patient's
2 Bill of Rights.

3 (a) A patient suffering from pain or a condition causing pain,
4 including, but not limited to, intractable pain has the option to
5 request or reject the use of any or all modalities in order to relieve
6 his or her pain.

7 (b) A patient who suffers from pain or a condition causing pain,
8 including, but not limited to, intractable pain has the option to
9 choose opiate medications to relieve that pain without first having
10 to submit to an invasive medical procedure, which is defined as
11 surgery, destruction of a nerve or other body tissue by
12 manipulation, or the implantation of a drug delivery system or
13 device, as long as the prescribing physician acts in conformance
14 with the provisions of the California Intractable Pain Treatment
15 Act, Section 2241.5 of the Business and Professions Code.

16 (c) The patient's physician may refuse to prescribe opiate
17 medication for the patient who requests a treatment for pain or a
18 condition causing pain, including, but not limited to, intractable
19 pain. However, that physician shall refer the patient to physicians
20 who treat pain and whose methods include the use of opiates.

21 (d) A physician who uses opiate therapy to relieve pain or a
22 condition causing pain, including, but not limited to, intractable
23 pain may prescribe a dosage deemed medically necessary to relieve
24 the patient's pain, as long as that prescribing is in conformance
25 with Section 2241.5 of the Business and Professions Code.

26 (e) A patient may voluntarily request that his or her physician
27 provide an identifying notice of the prescription for purposes of
28 emergency treatment or law enforcement identification.

29 (f) Nothing in this section shall do either of the following:

30 (1) Limit any reporting or disciplinary provisions applicable to
31 licensed physicians and surgeons who violate prescribing practices
32 or other provisions set forth in the Medical Practice Act, Chapter
33 5 (commencing with Section 2000) of Division 2 of the Business
34 and Professions Code, or the regulations adopted thereunder.

35 (2) Limit the applicability of any federal statute or federal
36 regulation or any of the other statutes or regulations of this state
37 that regulate dangerous drugs or controlled substances.

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**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 507

VERSION: As Amended April 27, 2011

AUTHOR: Hayashi

SPONSOR: American Cancer Society

COMMITTEE RECOMMENDED POSITION: Oppose

SUBJECT: Pain Management

Affected Sections: Amend Section 4301 of the Business and Professions Code and Sections 124960 and 124961 of the Health and Safety Code and repeal Section 11453 of the Health and Safety Code.

CURRENT STATUS: Assembly Business, Professions and Consumer Protection Committee Hearing scheduled for May 3, 2011/

EXISTING LAW:

1. Business and Professions Code Section 4301 authorizes the board to take action against any holder of a license that is guilty of unprofessional conduct as specified. Unprofessional conduct includes several elements including the clearly excessive furnishing of controlled substances in violation of Health and Safety Code section 11153(a).
2. Health and Safety Code Section 11453 authorizes the Department of Justice to employ of physician to interview and examine any patient for whom any Scheduled I – III controlled substance has been furnished as specified.
3. Health and Safety Code Section 124960 sets forth legislative findings and declarations including the state's right and duty to control the illegal use of opiates, inadequate treatment of acute and chronic pain is a significant health program, patients that suffer from severe chronic intractable pain should have access to proper treatment of his or her pain, many patients suffering require referral to a physician with expertise, opiates can be an accepted treatment for patients in severe chronic intractable pain and provides that a patient's physician may refuse to prescribe opiate medication however the physician shall inform that patient about physicians that special in such treatment.
4. Establishes the Pain Patient's Bill of Rights that includes:

- a. A patient suffering from severe chronic intractable pain has the option to request or reject the use of any or all modalities in order to relieve his or her pain.
- b. A patient has the option to choose opiate medications to relieve the pain as specified.
- c. A physician's right to refuse to prescribe opiate medication, however requires the physician to inform the patient about physicians that specialize in such treatment.
- d. A physician who uses opiate therapy may prescribe dosage deemed medically necessary consistent with Section 2241.5 of the Business and Professions Code
- e. A patient may request that the physician provide an identifying notice of the prescription for purposes of emergency treatment or law information.
- f. Nothing in the section limits any reporting or disciplinary provisions against those who violate prescribing practices or applicability of federal and state laws that regulate dangerous drugs or controlled substances.

AS AMENDED THIS BILL WOULD:

- 1. Amend B&PC Section 4301(d) to remove the term "clearly excessive" from the board's unprofessional conduct code.
- 2. Repeals the provisions authorizing the DOJ to employ a physician to interview and examine any patient for whom any Scheduled I – III controlled substance has been furnished as specified.
- 3. Replaces the clause "severe chronic intractable pain" with "pain or a condition causing pain, including, but not limited to, intractable pain".
- 4. Requires a physician that refuses to prescribe opiate medication to refer a patient to a physician who treats pain with methods that include the use of opiates.

AUTHOR'S INTENT:

According to the author's office, this bill eliminates ambiguities and inconsistencies in the Intractable Pain Treatment Act that negatively affect appropriate clinical interpretation. The author also indicated that the bill clarifies when a pharmacist is subject to unprofessional conduct standards for dispensing controlled substances and make conforming changes in existing law.

COMMENTS:

As originally introduced this bill could have limited the board's ability to discipline a pharmacist's license when they fail to exercise their professional judgment.

In the past three calendar years, the board has initiated 36 investigations alleging violations of Health and Safety Code Section 11153. This code establishes the corresponding responsibility that rests with a pharmacist who fills a prescription for a controlled substance and the board relies upon B&PC 4301(d) to establish such action as unprofessional conduct for purposes of discipline.

The bill in its current form removes the condition that the furnishing of the controlled substances must be clearly excessive to constitute unprofessional conduct and would instead provide that unprofessional conduct includes any furnishing of controlled substances in violation of those prescribed provisions relating to the prescription of controlled substances by a practitioner.

FISCAL IMPACT:

Board staff does not anticipate any significant impact to the board. Any minor impact could be absorbed within existing resources.

SUPPORT/OPPOSITION:

Support

American Cancer Society (sponsor)

California Academy of Physician Assistants

Opposition

None on file

HISTORY:

Date	Action
Apr. 14	Re-referred to Com. on HEALTH.
Apr. 13	From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Apr. 5	In committee: Hearing postponed by committee.
Mar. 22	Re-referred to Com. on HEALTH.
Mar. 21	From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Mar. 3	Referred to Coms. on HEALTH and B., P. & C.P.
Feb. 16	From printer. May be heard in committee March 18.
Feb. 15	Read first time. To print.

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 847

Introduced by Senator Correa

February 18, 2011

~~An act to add Division 8.9 (commencing with Section 22992.10) to the Business and Professions Code, relating to cannabis, and making an appropriation therefor. An act to amend Section 11362.768 of the Health and Safety Code, relating to medical marijuana.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 847, as amended, Correa. ~~Medical Cannabis Licensing Act. Marijuana Program: zoning restrictions: residential use.~~

Existing law, the Compassionate Use Act of 1996, an initiative measure, prohibits prosecution, pursuant to provisions of law relating to the possession or cultivation of marijuana, of a patient or a patient's primary caregiver who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

Existing law, the Medical Marijuana Program, requires the State Department of Public Health to establish a voluntary program for the issuance of identification cards to patients and primary caregivers under the Compassionate Use Act and grants immunity from arrest for violation of proscribed provisions relating to the cultivation, possession, transportation, and sale of marijuana, if conditions of the act are met.

The Medical Marijuana Program prohibits a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider from being located within a 600-foot radius of a school.

This bill would, also, prohibit a marijuana cooperative, collective, dispensary, operator, establishment, or provider from being located

within 600-foot radius of a residential zone or residential use. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This bill would establish the Medical Cannabis Licensing Act, to require a producer, distributor, or seller to be licensed by the State Department of Public Health to engage in the production, distribution, or sale of medical marijuana, and would require the license to be renewed every 12 months. This bill would require an applicant for a license to provide specified information. This bill would require establishment of an indicia program, to be administered by the State Board of Equalization, to require traceable, secure indicia of licensure to be placed on medical marijuana, would require establishment of a product testing program and a facilities inspection program administered by the department, and would authorize assessment of related fees.~~

~~This bill would require all moneys collected to be deposited in the Medical Cannabis Licensing Fund, which would be created in the State Treasury, and would, except for moneys derived from penalties, continuously appropriate moneys in the fund solely for the purpose of implementing, enforcing, and administering the licensing program.~~

Vote: majority. Appropriation: *yes-no*. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11362.768 of the Health and Safety Code
- 2 is amended to read:
- 3 11362.768. (a) This section shall apply to individuals specified
- 4 in subdivision (b) of Section 11362.765.
- 5 (b) No medical marijuana cooperative, collective, dispensary,
- 6 operator, establishment, or provider who possesses, cultivates, or
- 7 distributes medical marijuana pursuant to this article shall be
- 8 located within a 600-foot radius of a school, *residential zone, or*
- 9 *residential use.*

1 (c) The distance specified in this section shall be the horizontal
2 distance measured in a straight line from the property line of the
3 school, *residential zone*, or *residential use*, to the closest property
4 line of the lot on which the medical marijuana cooperative,
5 collective, dispensary, operator, establishment, or provider is to
6 be located without regard to intervening structures.

7 (d) This section shall not apply to a medical marijuana
8 cooperative, collective, dispensary, operator, establishment, or
9 provider that is also a licensed residential medical or elder care
10 facility.

11 (e) This section shall apply only to a medical marijuana
12 cooperative, collective, dispensary, operator, establishment, or
13 provider that is authorized by law to possess, cultivate, or distribute
14 medical marijuana and that has a storefront or mobile retail outlet
15 which ordinarily requires a local business license.

16 (f) Nothing in this section shall prohibit a city, county, or city
17 and county from adopting ordinances or policies that further restrict
18 the location or establishment of a medical marijuana cooperative,
19 collective, dispensary, operator, establishment, or provider.

20 (g) Nothing in this section shall preempt local ordinances,
21 adopted prior to January 1, 2011, that regulate the location or
22 establishment of a medical marijuana cooperative, collective,
23 dispensary, operator, establishment, or provider.

24 (h) For the purposes of this section, “school” means any public
25 or private school providing instruction in kindergarten or grades
26 1 to 12, inclusive, but does not include any private school in which
27 education is primarily conducted in private homes.

28 *SEC. 2. No reimbursement is required by this act pursuant to*
29 *Section 6 of Article XIII B of the California Constitution because*
30 *the only costs that may be incurred by a local agency or school*
31 *district will be incurred because this act creates a new crime or*
32 *infraction, eliminates a crime or infraction, or changes the penalty*
33 *for a crime or infraction, within the meaning of Section 17556 of*
34 *the Government Code, or changes the definition of a crime within*
35 *the meaning of Section 6 of Article XIII B of the California*
36 *Constitution.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 18, 2011. (JR11)**

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Attachment 4

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1280

Introduced by Assembly Member Perea Hill

February 18, 2011

~~An act to amend Section 440.20 of the Health and Safety Code, relating to health facilities. An act to amend, repeal, and add Section 11100 of, and to add and repeal Section 11100.02 of, the Health and Safety Code, relating to controlled substances.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1280, as amended, ~~Perea Hill. Health Facilities Disclosure Act. Ephedrine: retail sale.~~

(1) Existing law classifies controlled substances into 5 schedules, with the most restrictive limitations placed on controlled substances classified in Schedule I, and the least restrictive limitations placed on controlled substances classified in Schedule V. A controlled substance in any of the schedules may be possessed or dispensed only upon a lawful prescription, as specified. Existing law does not classify ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine within any of these 5 schedules, but provides that it is a crime, punishable as specified, for a person in this state who engages in specified transactions involving those drugs to fail to submit a report to the Department of Justice of all of those transactions, or to fail to submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice, as specified. Existing law prohibits the sale of more than 3 packages or 9 grams of a nonprescription product containing ephedrine or the other drugs, as specified.

This bill would instead provide that it is a misdemeanor, punishable as specified, for any retail distributor, except pursuant to a valid prescription from a licensed practitioner with prescriptive authority, to sell or distribute to a person specified amounts of nonprescription products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine within specified time limits, to sell or distribute any of those substances to a person whose information has generated an alert, or, except under specified conditions, to sell or distribute to any purchaser a nonprescription product containing any amount of those substances. The bill would contain provisions requiring the secure storage and monitoring of products containing any amount of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, as specified.

The bill would require retail distributors to transmit sale information to the National Precursor Log Exchange (NPLEx) for purposes of determining whether the sale would violate these provisions. The bill would require the Department of Justice to enter into a memorandum of understanding with the National Association of Drug Diversion Investigators regarding the transaction records in NPLEx, as specified. The bill would provide that the information in the system may not be used for any purpose other than to meet the requirements of, or comply with, this act or a certain federal act, as specified. The bill would specify legislative findings and intent. The bill's provisions would remain in effect only until January 1, 2018. By creating a new crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Health Facilities Disclosure Act, requires health care facilities to provide to the primary attending health care practitioner a copy of the complete itemized charges for services rendered by the health facility to the health care practitioner's patient when the primary attending health care practitioner is not employed by the health facility nor is a member of an integrated group practice that provided the health facility services, as specified.~~

~~This bill would make a technical, nonsubstantive change to a provision of the Health Facilities Disclosure Act.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11100 of the Health and Safety Code is
2 amended to read:
3 11100. (a) Any manufacturer, wholesaler, retailer, or other
4 person or entity in this state that sells, transfers, or otherwise
5 furnishes any of the following substances to any person or entity
6 in this state or any other state shall submit a report to the
7 Department of Justice of all of those transactions:
8 (1) Phenyl-2-propanone.
9 (2) Methylamine.
10 (3) Ethylamine.
11 (4) D-lysergic acid.
12 (5) Ergotamine tartrate.
13 (6) Diethyl malonate.
14 (7) Malonic acid.
15 (8) Ethyl malonate.
16 (9) Barbituric acid.
17 (10) Piperidine.
18 (11) N-acetylanthranilic acid.
19 (12) Pyrrolidine.
20 (13) Phenylacetic acid.
21 (14) Anthranilic acid.
22 (15) Morpholine.
23 (16) Ephedrine.
24 (17) Pseudoephedrine.
25 (18) Norpseudoephedrine.
26 (19) Phenylpropanolamine.
27 (20) Propionic anhydride.
28 (21) Isosafrole.
29 (22) Safrole.
30 (23) Piperonal.
31 (24) Thionylchloride.
32 (25) Benzyl cyanide.
33 (26) Ergonovine maleate.
34 (27) N-methylephedrine.
35 (28) N-ethylephedrine.

- 1 (29) N-methylpseudoephedrine.
- 2 (30) N-ethylpseudoephedrine.
- 3 (31) Chloroephedrine.
- 4 (32) Chloropseudoephedrine.
- 5 (33) Hydriodic acid.
- 6 (34) Gamma-butyrolactone, including butyrolactone;
- 7 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
- 8 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
- 9 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
- 10 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
- 11 with Chemical Abstract Service number (96-48-0).
- 12 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
- 13 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
- 14 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
- 15 1,4-diol with Chemical Abstract Service number (110-63-4).
- 16 (36) Red phosphorus, including white phosphorus,
- 17 hypophosphorous acid and its salts, ammonium hypophosphite,
- 18 calcium hypophosphite, iron hypophosphite, potassium
- 19 hypophosphite, manganese hypophosphite, magnesium
- 20 hypophosphite, sodium hypophosphite, and phosphorous acid and
- 21 its salts.
- 22 (37) Iodine or tincture of iodine.
- 23 (38) Any of the substances listed by the Department of Justice
- 24 in regulations promulgated pursuant to subdivision (b).
- 25 (b) The Department of Justice may adopt rules and regulations
- 26 in accordance with Chapter 3.5 (commencing with Section 11340)
- 27 of Part 1 of Division 3 of Title 2 of the Government Code that add
- 28 substances to subdivision (a) if the substance is a precursor to a
- 29 controlled substance and delete substances from subdivision (a).
- 30 However, no regulation adding or deleting a substance shall have
- 31 any effect beyond March 1 of the year following the calendar year
- 32 during which the regulation was adopted.
- 33 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
- 34 person or entity in this state, prior to selling, transferring, or
- 35 otherwise furnishing any substance specified in subdivision (a) to
- 36 any person or business entity in this state or any other state, shall
- 37 require ~~(A)~~ (i) a letter of authorization from that person or business
- 38 entity that includes the currently valid business license number or
- 39 federal Drug Enforcement Administration (DEA) registration
- 40 number, the address of the business, and a full description of how

the substance is to be used, and ~~(B)~~ (ii) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, “proper identification” for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller’s permit identification number; city or county business license number; license issued by the ~~California State Department of Health Services~~; *Public Health*; registration number issued by the ~~Federal~~ *federal* Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the ~~California~~ Department of Justice; driver’s license; or other identification issued by a state.

(2) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision

(c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian, or a retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(5) A state-licensed health care facility that administers or furnishes a substance to its patients.

(6) (A) Any sale, transfer, furnishing, or receipt of any product that contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the ~~federal~~ *Federal* Food, Drug, and Cosmetic Act (21 U.S.C. Sec.

301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to ~~subdivision~~ subsection (d) ~~or (e)~~ of Section 814 of Title 21 of the United States Code as an exempt product.

(7) The sale, transfer, furnishing, or receipt of any betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or any tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(8) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

~~(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine; or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine; other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.); or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.~~

~~(4)~~

(3) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

~~(h) For the purposes of this article, the following terms have the following meanings:~~

~~(1) “Drug store” is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(2) “General merchandise store” is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(3) “Grocery store” is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(4) “Pediatric liquid” means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams,~~

1 ounces, or other similar measure. In no instance shall the dosage
2 units exceed 15 milligrams of phenylpropanolamine or
3 pseudoephedrine per five milliliters of liquid product, except for
4 liquid products primarily intended for administration to children
5 under two years of age for which the recommended dosage unit
6 does not exceed two milliliters and the total package content does
7 not exceed one fluid ounce.

8 (5) “Retail distributor” means a grocery store, general
9 merchandise store, drugstore, or other related entity, the activities
10 of which, as a distributor of ephedrine, pseudoephedrine,
11 norpseudoephedrine, or phenylpropanolamine products, are limited
12 exclusively to the sale of ephedrine, pseudoephedrine,
13 norpseudoephedrine, or phenylpropanolamine products for personal
14 use both in number of sales and volume of sales, either directly to
15 walk-in customers or in face-to-face transactions by direct sales.
16 “Retail distributor” includes an entity that makes a direct sale, but
17 does not include the parent company of that entity if the company
18 is not involved in direct sales regulated by this article.

19 (6) “Sale for personal use” means the sale in a single transaction
20 to an individual customer for a legitimate medical use of a product
21 containing ephedrine, pseudoephedrine, norpseudoephedrine, or
22 phenylpropanolamine in dosages at or below that specified in
23 paragraph (3) of subdivision (g). “Sale for personal use” also
24 includes the sale of those products to employers to be dispensed
25 to employees from first-aid kits or medicine chests.

26 (i) It is the intent of the Legislature that this section shall
27 preempt all local ordinances or regulations governing the sale by
28 a retail distributor of over-the-counter products containing
29 ephedrine, pseudoephedrine, norpseudoephedrine, or
30 phenylpropanolamine.

31 (h) *This section shall remain in effect only until January 1, 2018,*
32 *and as of that date is repealed, unless a later enacted statute, that*
33 *is enacted before January 1, 2018, deletes or extends that date.*

34 SEC. 2. *Section 11100 is added to the Health and Safety Code,*
35 *to read:*

36 11100. (a) *Any manufacturer, wholesaler, retailer, or other*
37 *person or entity in this state that sells, transfers, or otherwise*
38 *furnishes any of the following substances to any person or entity*
39 *in this state or any other state shall submit a report to the*
40 *Department of Justice of all of those transactions:*

- 1 (1) *Phenyl-2-propanone.*
- 2 (2) *Methylamine.*
- 3 (3) *Ethylamine.*
- 4 (4) *D-lysergic acid.*
- 5 (5) *Ergotamine tartrate.*
- 6 (6) *Diethyl malonate.*
- 7 (7) *Malonic acid.*
- 8 (8) *Ethyl malonate.*
- 9 (9) *Barbituric acid.*
- 10 (10) *Piperidine.*
- 11 (11) *N-acetylanthranilic acid.*
- 12 (12) *Pyrrolidine.*
- 13 (13) *Phenylacetic acid.*
- 14 (14) *Anthranilic acid.*
- 15 (15) *Morpholine.*
- 16 (16) *Ephedrine.*
- 17 (17) *Pseudoephedrine.*
- 18 (18) *Norpseudoephedrine.*
- 19 (19) *Phenylpropanolamine.*
- 20 (20) *Propionic anhydride.*
- 21 (21) *Isosafrole.*
- 22 (22) *Safrole.*
- 23 (23) *Piperonal.*
- 24 (24) *Thionylchloride.*
- 25 (25) *Benzyl cyanide.*
- 26 (26) *Ergonovine maleate.*
- 27 (27) *N-methylephedrine.*
- 28 (28) *N-ethylephedrine.*
- 29 (29) *N-methylpseudoephedrine.*
- 30 (30) *N-ethylpseudoephedrine.*
- 31 (31) *Chloroephedrine.*
- 32 (32) *Chloropseudoephedrine.*
- 33 (33) *Hydriodic acid.*
- 34 (34) *Gamma-butyrolactone, including butyrolactone;*
35 *butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;*
36 *dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;*
37 *1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;*
38 *3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone*
39 *with Chemical Abstract Service number (96-48-0).*

1 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
2 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
3 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
4 1,4-diol with Chemical Abstract Service number (110-63-4).

5 (36) Red phosphorus, including white phosphorus,
6 hypophosphorous acid and its salts, ammonium hypophosphite,
7 calcium hypophosphite, iron hypophosphite, potassium
8 hypophosphite, manganese hypophosphite, magnesium
9 hypophosphite, sodium hypophosphite, and phosphorous acid and
10 its salts.

11 (37) Iodine or tincture of iodine.

12 (38) Any of the substances listed by the Department of Justice
13 in regulations promulgated pursuant to subdivision (b).

14 (b) The Department of Justice may adopt rules and regulations
15 in accordance with Chapter 3.5 (commencing with Section 11340)
16 of Part 1 of Division 3 of Title 2 of the Government Code that add
17 substances to subdivision (a) if the substance is a precursor to a
18 controlled substance and delete substances from subdivision (a).
19 However, no regulation adding or deleting a substance shall have
20 any effect beyond March 1 of the year following the calendar year
21 during which the regulation was adopted.

22 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
23 person or entity in this state, prior to selling, transferring, or
24 otherwise furnishing any substance specified in subdivision (a) to
25 any person or business entity in this state or any other state, shall
26 require (i) a letter of authorization from that person or business
27 entity that includes the currently valid business license number or
28 federal Drug Enforcement Administration (DEA) registration
29 number, the address of the business, and a full description of how
30 the substance is to be used, and (ii) proper identification from the
31 purchaser. The manufacturer, wholesaler, retailer, or other person
32 or entity in this state shall retain this information in a readily
33 available manner for three years. The requirement for a full
34 description of how the substance is to be used does not require the
35 person or business entity to reveal their chemical processes that
36 are typically considered trade secrets and proprietary information.

37 (B) For the purposes of this paragraph, "proper identification"
38 for in-state or out-of-state purchasers includes two or more of the
39 following: federal tax identification number; seller's permit
40 identification number; city or county business license number;

1 license issued by the State Department of Public Health;
2 registration number issued by the federal Drug Enforcement
3 Administration; precursor business permit number issued by the
4 Bureau of Narcotic Enforcement of the Department of Justice;
5 driver's license; or other identification issued by a state.

6 (2) (A) Any manufacturer, wholesaler, retailer, or other person
7 or entity in this state that exports a substance specified in
8 subdivision (a) to any person or business entity located in a foreign
9 country shall, on or before the date of exportation, submit to the
10 Department of Justice a notification of that transaction, which
11 notification shall include the name and quantity of the substance
12 to be exported and the name, address, and, if assigned by the
13 foreign country or subdivision thereof, business identification
14 number of the person or business entity located in a foreign country
15 importing the substance.

16 (B) The department may authorize the submission of the
17 notification on a monthly basis with respect to repeated, regular
18 transactions between an exporter and an importer involving a
19 substance specified in subdivision (a), if the department determines
20 that a pattern of regular supply of the substance exists between
21 the exporter and importer and that the importer has established
22 a record of utilization of the substance for lawful purposes.

23 (d) (1) Any manufacturer, wholesaler, retailer, or other person
24 or entity in this state that sells, transfers, or otherwise furnishes
25 a substance specified in subdivision (a) to a person or business
26 entity in this state or any other state shall, not less than 21 days
27 prior to delivery of the substance, submit a report of the
28 transaction, which includes the identification information specified
29 in subdivision (c), to the Department of Justice. The Department
30 of Justice may authorize the submission of the reports on a monthly
31 basis with respect to repeated, regular transactions between the
32 furnisher and the recipient involving the substance or substances
33 if the Department of Justice determines that a pattern of regular
34 supply of the substance or substances exists between the
35 manufacturer, wholesaler, retailer, or other person or entity that
36 sells, transfers, or otherwise furnishes the substance or substances
37 and the recipient of the substance or substances, and the recipient
38 has established a record of utilization of the substance or
39 substances for lawful purposes.

1 (2) *The person selling, transferring, or otherwise furnishing*
2 *any substance specified in subdivision (a) shall affix his or her*
3 *signature or otherwise identify himself or herself as a witness to*
4 *the identification of the purchaser or purchasing individual, and*
5 *shall, if a common carrier is used, maintain a manifest of the*
6 *delivery to the purchaser for three years.*

7 (e) *This section shall not apply to any of the following:*

8 (1) *Any pharmacist or other authorized person who sells or*
9 *furnishes a substance upon the prescription of a physician, dentist,*
10 *podiatrist, or veterinarian.*

11 (2) *Any physician, dentist, podiatrist, or veterinarian who*
12 *administers or furnishes a substance to his or her patients.*

13 (3) *Any manufacturer or wholesaler licensed by the California*
14 *State Board of Pharmacy that sells, transfers, or otherwise*
15 *furnishes a substance to a licensed pharmacy, physician, dentist,*
16 *podiatrist, or veterinarian, or a retail distributor as defined in*
17 *subdivision (h), provided that the manufacturer or wholesaler*
18 *submits records of any suspicious sales or transfers as determined*
19 *by the Department of Justice.*

20 (4) *Any analytical research facility that is registered with the*
21 *federal Drug Enforcement Administration of the United States*
22 *Department of Justice.*

23 (5) *A state-licensed health care facility that administers or*
24 *furnishes a substance to its patients.*

25 (6) (A) *Any sale, transfer, furnishing, or receipt of any product*
26 *that contains ephedrine, pseudoephedrine, norpseudoephedrine,*
27 *or phenylpropanolamine and which is lawfully sold, transferred,*
28 *or furnished over the counter without a prescription pursuant to*
29 *the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et*
30 *seq.) or regulations adopted thereunder. However, this section*
31 *shall apply to preparations in solid or liquid dosage form, except*
32 *pediatric liquid forms, as defined, containing ephedrine,*
33 *pseudoephedrine, norpseudoephedrine, or phenylpropanolamine*
34 *where the individual transaction involves more than three packages*
35 *or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,*
36 *or phenylpropanolamine.*

37 (B) *Any ephedrine, pseudoephedrine, norpseudoephedrine, or*
38 *phenylpropanolamine product subsequently removed from*
39 *exemption pursuant to Section 814 of Title 21 of the United States*
40 *Code shall similarly no longer be exempt from any state reporting*

1 *or permitting requirement, unless otherwise reinstated pursuant*
2 *to subsection (d) of Section 814 of Title 21 of the United States*
3 *Code as an exempt product.*

4 *(7) The sale, transfer, furnishing, or receipt of any betadine or*
5 *povidone solution with an iodine content not exceeding 1 percent*
6 *in containers of eight ounces or less, or any tincture of iodine not*
7 *exceeding 2 percent in containers of one ounce or less, that is sold*
8 *over the counter.*

9 *(8) Any transfer of a substance specified in subdivision (a) for*
10 *purposes of lawful disposal as waste.*

11 *(f) (1) Any person specified in subdivision (a) or (d) who does*
12 *not submit a report as required by that subdivision or who*
13 *knowingly submits a report with false or fictitious information*
14 *shall be punished by imprisonment in a county jail not exceeding*
15 *six months, by a fine not exceeding five thousand dollars (\$5,000),*
16 *or by both the fine and imprisonment.*

17 *(2) Any person specified in subdivision (a) or (d) who has*
18 *previously been convicted of a violation of paragraph (1) shall,*
19 *upon a subsequent conviction thereof, be punished by imprisonment*
20 *in the state prison, or by imprisonment in a county jail not*
21 *exceeding one year, by a fine not exceeding one hundred thousand*
22 *dollars (\$100,000), or by both the fine and imprisonment.*

23 *(g) (1) Except as otherwise provided in subparagraph (A) of*
24 *paragraph (6) of subdivision (e), it is unlawful for any*
25 *manufacturer, wholesaler, retailer, or other person to sell, transfer,*
26 *or otherwise furnish a substance specified in subdivision (a) to a*
27 *person under 18 years of age.*

28 *(2) Except as otherwise provided in subparagraph (A) of*
29 *paragraph (6) of subdivision (e), it is unlawful for any person*
30 *under 18 years of age to possess a substance specified in*
31 *subdivision (a).*

32 *(3) Notwithstanding any other law, it is unlawful for any retail*
33 *distributor to (A) sell in a single transaction more than three*
34 *packages of a product that he or she knows to contain ephedrine,*
35 *pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,*
36 *or (B) knowingly sell more than nine grams of ephedrine,*
37 *pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,*
38 *other than pediatric liquids as defined. Except as otherwise*
39 *provided in this section, the three package per transaction*
40 *limitation or nine gram per transaction limitation imposed by this*

1 paragraph shall apply to any product that is lawfully sold,
2 transferred, or furnished over the counter without a prescription
3 pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
4 Sec. 301 et seq.), or regulations adopted thereunder, unless
5 exempted from the requirements of the federal Controlled
6 Substances Act (21 U.S.C. Sec. 801 et seq.) by the federal Drug
7 Enforcement Administration pursuant to Section 814 of Title 21
8 of the United States Code.

9 (4) (A) A first violation of this subdivision is a misdemeanor.

10 (B) Any person who has previously been convicted of a violation
11 of this subdivision shall, upon a subsequent conviction thereof, be
12 punished by imprisonment in a county jail not exceeding one year,
13 by a fine not exceeding ten thousand dollars (\$10,000), or by both
14 the fine and imprisonment.

15 (h) For the purposes of this article, the following terms have
16 the following meanings:

17 (1) "Drug store" is any entity described in Code 5912 of the
18 Standard Industrial Classification (SIC) Manual published by the
19 United States Office of Management and Budget, 1987 edition.

20 (2) "General merchandise store" is any entity described in
21 Codes 5311 to 5399, inclusive, and Code 5499 of the Standard
22 Industrial Classification (SIC) Manual published by the United
23 States Office of Management and Budget, 1987 edition.

24 (3) "Grocery store" is any entity described in Code 5411 of the
25 Standard Industrial Classification (SIC) Manual published by the
26 United States Office of Management and Budget, 1987 edition.

27 (4) "Pediatric liquid" means a nonencapsulated liquid whose
28 unit measure according to product labeling is stated in milligrams,
29 ounces, or other similar measure. In no instance shall the dosage
30 units exceed 15 milligrams of phenylpropanolamine or
31 pseudoephedrine per five milliliters of liquid product, except for
32 liquid products primarily intended for administration to children
33 under two years of age for which the recommended dosage unit
34 does not exceed two milliliters and the total package content does
35 not exceed one fluid ounce.

36 (5) "Retail distributor" means a grocery store, general
37 merchandise store, drugstore, or other related entity, the activities
38 of which, as a distributor of ephedrine, pseudoephedrine,
39 norpseudoephedrine, or phenylpropanolamine products, are limited
40 exclusively to the sale of ephedrine, pseudoephedrine,

1 *norpseudoephedrine, or phenylpropanolamine products for*
2 *personal use both in number of sales and volume of sales, either*
3 *directly to walk-in customers or in face-to-face transactions by*
4 *direct sales. “Retail distributor” includes an entity that makes a*
5 *direct sale, but does not include the parent company of that entity*
6 *if the company is not involved in direct sales regulated by this*
7 *article.*

8 (6) *“Sale for personal use” means the sale in a single*
9 *transaction to an individual customer for a legitimate medical use*
10 *of a product containing ephedrine, pseudoephedrine,*
11 *norpseudoephedrine, or phenylpropanolamine in dosages at or*
12 *below that specified in paragraph (3) of subdivision (g). “Sale for*
13 *personal use” also includes the sale of those products to employers*
14 *to be dispensed to employees from first aid kits or medicine chests.*

15 (i) *It is the intent of the Legislature that this section shall*
16 *preempt all local ordinances or regulations governing the sale by*
17 *a retail distributor of over-the-counter products containing*
18 *ephedrine, pseudoephedrine, norpseudoephedrine, or*
19 *phenylpropanolamine.*

20 (j) *This section shall become operative on January 1, 2018.*

21 SEC. 3. *Section 11100.02 is added to the Health and Safety*
22 *Code, to read:*

23 11100.02. (a) *Notwithstanding any other law, it is unlawful*
24 *for any retail distributor to knowingly do the following, except*
25 *pursuant to a valid prescription from a licensed practitioner with*
26 *prescriptive authority:*

27 (1) *To sell or distribute to the same purchaser within any 30-day*
28 *period more than nine grams, or within any day more than 3.6*
29 *grams, of ephedrine base, pseudoephedrine base,*
30 *norpseudoephedrine base, or phenylpropanolamine base contained*
31 *in any product that is lawfully sold, transferred, or furnished over*
32 *the counter without a prescription pursuant to the Federal Food,*
33 *Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations*
34 *adopted thereunder, unless exempted from the requirements of the*
35 *federal Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) by*
36 *the federal Drug Enforcement Administration pursuant to Section*
37 *814 of Title 21 of the United States Code.*

38 (2) *To sell or distribute any ephedrine, pseudoephedrine,*
39 *norpseudoephedrine, or phenylpropanolamine to a person whose*

1 *information has generated an alert as described in paragraph (3)*
2 *of subdivision (d) regarding that sale.*

3 *(3) To sell or distribute to any purchaser a nonprescription*
4 *product containing any amount of ephedrine, pseudoephedrine,*
5 *norpseudoephedrine, or phenylpropanolamine, except under the*
6 *following conditions:*

7 *(A) The purchaser shall produce valid government-issued photo*
8 *identification.*

9 *(B) The purchaser shall sign a written or electronic log showing*
10 *the following:*

11 *(i) The date and time of the transaction.*

12 *(ii) The identification number presented.*

13 *(iii) The agency issuing the identification and the type of*
14 *identification issued.*

15 *(iv) The name, date of birth, and address of the purchaser.*

16 *(v) The amount of ephedrine base, pseudoephedrine base,*
17 *norpseudoephedrine base, or phenylpropanolamine base contained*
18 *in the material, compound, mixture, or preparation sold.*

19 *(b) The retail distributor shall store any product containing any*
20 *amount of ephedrine, pseudoephedrine, norpseudoephedrine, or*
21 *phenylpropanolamine either behind the counter or in a locked*
22 *cabinet so that the customer does not have access to the product.*

23 *(c) (1) To facilitate the monitoring of the sales of*
24 *nonprescription products containing ephedrine, pseudoephedrine,*
25 *norpseudoephedrine, or phenylpropanolamine, the retail*
26 *distributor shall record all of the following information at the point*
27 *of sale regarding the proposed transaction for the purpose of*
28 *complying with this section or the federal Combat*
29 *Methamphetamine Epidemic Act of 2005, or any regulation*
30 *adopted pursuant to this section or that act, and for no other*
31 *purpose:*

32 *(A) The date and time of the transaction.*

33 *(B) The identification number of the purchaser, issuing agency*
34 *of the identification, and the type of identification used.*

35 *(C) The name, date of birth, and address of the purchaser*
36 *verified through a photo identification of the purchaser.*

37 *(D) The name, quantity of packages, and total gram weight of*
38 *ephedrine base, pseudoephedrine base, norpseudoephedrine base,*
39 *or phenylpropanolamine base contained in a product or products*
40 *purchased, received, or otherwise acquired.*

1 (E) *The name or initials of the person making the sale.*

2 (2) *Beginning January 1, 2013, the retail distributor shall*
3 *transmit the information immediately to the National Precursor*
4 *Log Exchange (NPLEx) administered by the National Association*
5 *of Drug Diversion Investigators (NADDI) for purposes of*
6 *determining whether the proposed sale would violate this section*
7 *and therefore may not proceed, provided that the NPLEx system*
8 *is available to retailers in the state without a charge for accessing*
9 *the system. The transaction information shall not be accessed,*
10 *stored, or used by the retail distributor for any purpose other than*
11 *to meet the requirements set forth in this section or to comply with*
12 *the provisions of the federal Combat Methamphetamine Epidemic*
13 *Act of 2005, or any regulation adopted pursuant to this section or*
14 *that act. The retail distributor shall not maintain a separate copy*
15 *of the transaction information except as required by the federal*
16 *Combat Methamphetamine Epidemic Act of 2005.*

17 (3) (A) *A retail distributor shall provide notice electronically,*
18 *in writing, or by signage to purchasers that the information*
19 *collected pursuant to the federal Combat Methamphetamine*
20 *Epidemic Act of 2005 and this section shall be provided to law*
21 *enforcement for purposes of determining the legality of a proposed*
22 *sale.*

23 (B) *The Legislature finds that it is necessary for probable cause*
24 *to be demonstrated to trigger an investigation in connection with*
25 *an individual whose requested purchase is denied by the system*
26 *a single time.*

27 (4) *This subdivision shall not be construed to require a retail*
28 *distributor to maintain state-required records relating to the sale*
29 *of products containing ephedrine, pseudoephedrine,*
30 *norpseudoephedrine, or phenylpropanolamine in a separate*
31 *location or log from records required by federal law to be kept*
32 *with respect to those products.*

33 (5) *The recording requirements specified in this subdivision*
34 *shall not apply to the sale of a single package containing not more*
35 *than 60 milligrams of pseudoephedrine, consistent with the federal*
36 *Combat Methamphetamine Epidemic Act of 2005.*

37 (6) *If a retail distributor experiences mechanical or electronic*
38 *failure of the system and is unable to comply with the recording*
39 *requirements of this subdivision, the retail distributor shall*
40 *maintain the required records in a written log or an alternative*

1 *electronic recordkeeping mechanism until the retail distributor is*
2 *able to comply with the recording requirements of this subdivision.*

3 *(d) (1) Provided that the department executes a memorandum*
4 *of understanding (MOU) with NADDI governing access, pursuant*
5 *to this subdivision, NADDI shall forward California transaction*
6 *records in NPLeX to the Department of Justice weekly and provide*
7 *real-time access to NPLeX information through the NPLeX online*
8 *portal to law enforcement in the state as authorized by the*
9 *department.*

10 *(2) The system shall allow retail distributors of products*
11 *containing ephedrine, pseudoephedrine, norpseudoephedrine, or*
12 *phenylpropanolamine to enter into the database the information*
13 *specified in subdivision (d) regarding the proposed sale of those*
14 *products.*

15 *(3) The system shall be capable of providing the retail*
16 *distributor with an immediate real-time alert any time any*
17 *provision of this section is being violated by a proposed sale.*

18 *(4) The MOU shall state that no party to the MOU nor any entity*
19 *under contract to provide the electronic authorization and*
20 *monitoring system shall be authorized to use the information*
21 *contained in the system for any purpose other than those set forth*
22 *in this section, the federal Combat Methamphetamine Epidemic*
23 *Act of 2005, or any regulation adopted pursuant to this section or*
24 *that act. However, the system operator shall be authorized to*
25 *analyze the information for the sole purpose of assessing and*
26 *improving the performance and efficacy of the system. In addition,*
27 *the MOU shall require that any retail distributor's access to the*
28 *electronic authorization and monitoring system's database is*
29 *limited solely to records of sales transactions made by that retail*
30 *distributor, which access shall be solely for purposes of complying*
31 *with the federal Combat Methamphetamine Epidemic Act of 2005*
32 *or this section, or to respond to a duly authorized law enforcement*
33 *request or court order for information collected under that act or*
34 *this section.*

35 *(5) The system's security program shall comply with the security*
36 *standards for the Criminal Justice Information System of the*
37 *Federal Bureau of Investigation and may be audited once a year*
38 *by the department.*

39 *(6) A retail distributor's use of the system shall be subject to*
40 *Section 56.101 of the Civil Code. A retail distributor shall not*

1 maintain any records collected under this system for longer than
2 two years, or as otherwise required by the federal Combat
3 Methamphetamine Epidemic Act of 2005.

4 (7) Law enforcement access to the system shall be recorded by
5 means of a unique access code for each individual accessing the
6 system. Each user's history shall be maintained and may be audited
7 by the department.

8 (8) The department may submit recommendations to NADDI
9 regarding system changes to assist in identifying false identification
10 cards.

11 (e) The State Board of Equalization shall notify all retailers
12 about the requirement to submit transactions to NPLeX no later
13 than September 1, 2012.

14 (f) This section shall not apply to a health care practitioner with
15 prescriptive authority who is currently licensed in this state.

16 (g) (1) A first violation of this section is a misdemeanor.

17 (2) Any person who has previously been convicted of a violation
18 of this section shall, upon a subsequent conviction thereof, be
19 punished by imprisonment in a county jail not exceeding one year,
20 by a fine not exceeding ten thousand dollars (\$10,000), or by both
21 the fine and imprisonment.

22 (h) For the purposes of this section, the following terms have
23 the following meanings:

24 (1) "Department" means the Department of Justice.

25 (2) "Drug store" is any entity described in Code 5912 of the
26 Standard Industrial Classification (SIC) Manual published by the
27 United States Office of Management and Budget, 1987 edition.

28 (3) "General merchandise store" is any entity described in
29 Codes 5311 to 5399, inclusive, and Code 5499 of the Standard
30 Industrial Classification (SIC) Manual published by the United
31 States Office of Management and Budget, 1987 edition.

32 (4) "Grocery store" is any entity described in Code 5411 of the
33 Standard Industrial Classification (SIC) Manual published by the
34 United States Office of Management and Budget, 1987 edition.

35 (5) "Retail distributor" means a grocery store, general
36 merchandise store, drugstore, or other related entity, the activities
37 of which, as a distributor of ephedrine, pseudoephedrine,
38 norpseudoephedrine, or phenylpropanolamine products, are limited
39 exclusively to the sale of ephedrine, pseudoephedrine,
40 norpseudoephedrine, or phenylpropanolamine products for

1 *personal use both in number of sales and volume of sales, either*
2 *directly to walk-in customers or in face-to-face transactions by*
3 *direct sales. “Retail distributor” includes an entity that makes a*
4 *direct sale, but does not include the parent company of that entity*
5 *if the company is not involved in direct sales regulated by this*
6 *article.*

7 (6) *“Sale for personal use” means the sale in a single*
8 *transaction to an individual customer for a legitimate medical use*
9 *of a product containing ephedrine, pseudoephedrine,*
10 *norpseudoephedrine, or phenylpropanolamine in amounts at or*
11 *below that specified in subdivision (a). “Sale for personal use”*
12 *also includes the sale of those products to employers to be*
13 *dispensed to employees from first aid kits or medicine chests.*

14 (i) *It is the intent of the Legislature that this section shall*
15 *preempt all local ordinances or regulations governing the sale by*
16 *a retail distributor of over-the-counter products containing*
17 *ephedrine, pseudoephedrine, norpseudoephedrine, or*
18 *phenylpropanolamine.*

19 (j) *This section shall remain in effect only until January 1,*
20 *2018, and as of that date is repealed, unless a later enacted statute,*
21 *that is enacted before January 1, 2018, deletes or extends that*
22 *date.*

23 SEC. 4. *No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*

32 SECTION 1. ~~Section 440.20 of the Health and Safety Code is~~
33 ~~amended to read:~~

34 ~~440.20. Within seven days after completion of the patient’s~~
35 ~~itemized bill, a health facility shall provide to the primary attending~~
36 ~~health care practitioner a copy, upon written request specifying~~
37 ~~the individual patient, of the complete itemized charges for services~~
38 ~~rendered by the health facility to the health care practitioner’s~~
39 ~~patient when the primary attending health care practitioner is not~~

- 1 ~~employed by the health facility nor is a member of an integrated~~
- 2 ~~group practice that provided the health facility services.~~

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**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 1280

VERSION: As Amended March 25, 2011

AUTHOR: Hill

SPONSOR:

COMMITTEE RECOMMENDED POSITION: None

SUBJECT: Ephedrine: Retail Sale

AFFECTED SECTIONS: An act to amend, repeal, and add Section 11100 of, and to add and repeal Section 11100.02 of, the Health and Safety Code

CURRENT STATUS: Assembly Public Safety Hearing scheduled for May 3, 2011.

EXISTING LAW:

Health and Safety Code Section 11100:

1. Requires any manufacturer, wholesaler, retailer or other person or entity in this state that sells, transfers or otherwise furnishes specified substances, to report to the Department of Justice (DOJ). These substances are controlled substances and/or chemical precursors for manufacture of illicit drugs.
2. Specifies that such entities, prior to selling, transferring or otherwise furnishing any specified substance shall require a letter of authorization that includes the currently valid business license or DEA registration, and the address of the business and proper identification of the purchaser. Information collected must also include how the substance is to be used, and specifies that this information shall be maintained for three years.
3. Defines proper identification to include two of the following:
 - a. Federal tax identification number
 - b. Seller's permit identification number
 - c. City or county business license number
 - d. State Department of Public Health License
 - e. Registration issued by federal Drug Enforcement Administration
 - f. Precursor business permit number issued by the Bureau of Narcotic Enforcement
 - g. Driver's license
 - h. Other identification issued by a state.
4. Requires any entity that exports a substance, as provided in this section, to any person or business located in a foreign country to notify the DOJ of the transaction and specifies that the notification shall include the name and quantity of the substance, the name, address and business identification number (if assigned by the foreign country).
5. Specifies that the DOJ may require such reports on a monthly basis.
6. Requires reporting not less than 21 days in advance of a transaction to any entity in the US or on a monthly basis as determined by the DOJ.

7. Requires the seller to affix his or her signature or provide other identification to the purchaser and specifies requirement for the use of a common carrier.
8. Specifies exemptions to these provisions for the following:
 - a. Pharmacist or other authorized person who sells or furnishes a substance pursuant to a prescription
 - b. Any physician, dentist, podiatrist or veterinarian who administers or furnishes a substance to his or her patients.
 - c. Manufacturers and board licensed wholesalers from these provisions as specified, but requires records of suspicious sales and transfers as determined by the DOJ.
 - d. Any analytical research facility that is registered with the federal DEA.
 - e. A state-licensed health care facility that administers or furnishes a substance to its patients.
 - f. Specified products that are sold over the counter without a prescription, unless the individual transaction involves more than three packages or nine grams of the substance.
 - g. Any transfer or a substance for lawful disposal as waste.
9. Creates penalties for non-compliance, including jail time and fines as specified.
10. Specifies the conditions under which it is unlawful to sell, transfer or otherwise furnish a substance to a person under 18 years of age.
11. Provides that it is unlawful for a retailer to sell more than three packages of ephedrine containing products in a single transaction or sell more than nine grams of ephedrine containing products as specified.
12. Defines several terms for purposes of this article.
13. Specifies that these provisions preempt all local ordinances or regulations governing the sale of specified products.

THIS BILL WOULD:

Until January 1, 2018 amend Section 11100 of the Health and Safety Code to move some provisions into Section 11100.02.

Until January 1, 2018 add Section 11100.02 of the Health and Safety Code:

1. Specify it is unlawful for a retailers to:
 - a. Sell to the same purchaser within 30-days, more than nine grams or within any day more than 3.6 grams of ephedrine containing products
 - b. Sell ephedrine containing products to a person whose information has generated an alert, as specified
 - c. Sell ephedrine containing products without collecting proper identification as specified
2. Require a retail distributor to store ephedrine containing products behind the counter or in a locked cabinet
3. Establish recordkeeping elements including:
 - a. Date and time of transaction
 - b. Purchaser identification information - name, date of birth and address
 - c. Name, quantity of packages and total gram weight of ephedrine containing products

- d. Initial of person making the sale
- 4. Beginning January 1, 2013, require the retailer to immediately transmit the information required above to the National Precursor Log Exchange (NPLEx) to determine if the proposed sale would violate the transaction limits for ephedrine containing products. Further it would:
 - a. Prohibit the retailer from using this information for any other purpose
 - b. Require the retailer to post a notice regarding the collection of this information
 - c. Specify that a separate record of this information shall not also be required to maintain state-required records in a separate location
 - d. Exempt from this requirement the sale of a single package containing not more than 60 milligrams of an ephedrine product
 - e. Establish system requirements and implementation options
- 5. Require the State Board of Equalization to notify retailers of this requirement
- 6. Exempt CA licensed health care practitioners with prescriptive authority.
- 7. Define various terms for purposes of this section.

Effective January 1, 2018

- 1. Restore Section 11100 to its current form.
- 2. Repeal Section 11100.02.

FISCAL IMPACT:

Enforcement of these provisions would reside primarily with the Department of Justice. The board does not anticipate any significant fiscal impact. Any minor impact could be absorbed within existing resources.

COMMENTS:

The federal government passed The Combat Methamphetamine Act of 2005 to establish restrictions on the sale of over-the-counter (nonprescription) products containing ephedrine (EPH), pseudoephedrine (PSE), or phenylpropanolamine (PPA) - classified under the federal Controlled Substances Act as "scheduled listed chemical products." The act changed the limit amount of product that could be sold by a retailer to an individual and the amount that can be purchased by an individual. The requirements of this Act include blister packaging for nonliquid dosages, buyer's proof of identification, recordkeeping by the seller, and penalties for violators of the new restrictions.

This proposal would require retailers to report ephedrine sales as specified, but only for a five year-period. It is unclear how or why this timeframe was established. Efforts to speak with the author's office have thus far been unsuccessful. Board staff will continue efforts to seek clarification and will provide the board with additional information when available.

PREVIOUS/RELATED LEGISLATION:Previous

AB 1455 (Hill, 2009) contained similar provisions but stalled in policy committee. The board did not have a position on this measure.

Related

SB 315 (Wright, 2011) contains provisions that are also intended to reduce the sales of ephedrine products, however it takes a much different approach. Generally, SB 315 would prohibit the sale of ephedrine product to an individual except pursuant to a prescription.

SUPPORT/OPPOSITION:Unknown**HISTORY:****Date Action**

Mar. 29 Re-referred to Com. on PUB. S.

Mar. 25 Referred to Com. on PUB. S. From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

Feb. 20 From printer. May be heard in committee March 22.

Feb. 18 Read first time. To print.

Introduced by Senator Wright

February 14, 2011

An act to amend Sections 11100 and 11106 of, and to add Section 11375.5 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 315, as introduced, Wright. Ephedrine and pseudoephedrine.

(1) Existing law classifies controlled substances into 5 schedules, with the most restrictive limitations placed on controlled substances classified in Schedule I, and the least restrictive limitations placed on controlled substances classified in Schedule V. A controlled substance in any of the schedules may be possessed or dispensed only upon a lawful prescription, as specified. Existing law does not classify ephedrine, pseudoephedrine, and specified related drugs within any of these 5 schedules, but provides that it is a crime, punishable as specified, for a person in this state who engages in specified transactions involving those drugs to fail to submit a report to the Department of Justice of all of those transactions, or to fail to submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice, as specified.

This bill would provide, in addition, that any person who obtains ephedrine, pseudoephedrine, phenylpropanolamine, and specified related drugs without a prescription, as specified, shall be guilty of an infraction or a misdemeanor. The bill would make conforming changes to related provisions. By creating new crimes or revising the penalties for existing crimes involving ephedrine, pseudoephedrine, and specified related drugs, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11100 of the Health and Safety Code is
2 amended to read:

3 11100. (a) Any manufacturer, wholesaler, retailer, or other
4 person or entity in this state that sells, transfers, or otherwise
5 furnishes any of the following substances to any person or entity
6 in this state or any other state shall submit a report to the
7 Department of Justice of all of those transactions:

- 8 (1) Phenyl-2-propanone.
- 9 (2) Methylamine.
- 10 (3) Ethylamine.
- 11 (4) D-lysergic acid.
- 12 (5) Ergotamine tartrate.
- 13 (6) Diethyl malonate.
- 14 (7) Malonic acid.
- 15 (8) Ethyl malonate.
- 16 (9) Barbituric acid.
- 17 (10) Piperidine.
- 18 (11) N-acetylanthranilic acid.
- 19 (12) Pyrrolidine.
- 20 (13) Phenylacetic acid.
- 21 (14) Anthranilic acid.
- 22 (15) Morpholine.
- 23 (16) Ephedrine.
- 24 (17) Pseudoephedrine.
- 25 (18) Norpseudoephedrine.
- 26 (19) Phenylpropanolamine.
- 27 (20) Propionic anhydride.
- 28 (21) Isosafrole.
- 29 (22) Safrole.
- 30 (23) Piperonal.

- 1 (24) Thionylchloride.
- 2 (25) Benzyl cyanide.
- 3 (26) Ergonovine maleate.
- 4 (27) N-methylephedrine.
- 5 (28) N-ethylephedrine.
- 6 (29) N-methylpseudoephedrine.
- 7 (30) N-ethylpseudoephedrine.
- 8 (31) Chloroephedrine.
- 9 (32) Chloropseudoephedrine.
- 10 (33) Hydriodic acid.
- 11 (34) Gamma-butyrolactone, including butyrolactone;
- 12 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
- 13 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
- 14 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
- 15 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
- 16 with Chemical Abstract Service number (96-48-0).
- 17 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
- 18 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
- 19 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
- 20 1,4-diol with Chemical Abstract Service number (110-63-4).
- 21 (36) Red phosphorus, including white phosphorus,
- 22 hypophosphorous acid and its salts, ammonium hypophosphite,
- 23 calcium hypophosphite, iron hypophosphite, potassium
- 24 hypophosphite, manganese hypophosphite, magnesium
- 25 hypophosphite, sodium hypophosphite, and phosphorous acid and
- 26 its salts.
- 27 (37) Iodine or tincture of iodine.
- 28 (38) Any of the substances listed by the Department of Justice
- 29 in regulations promulgated pursuant to subdivision (b).
- 30 (b) The Department of Justice may adopt rules and regulations
- 31 in accordance with Chapter 3.5 (commencing with Section 11340)
- 32 of Part 1 of Division 3 of Title 2 of the Government Code that add
- 33 substances to subdivision (a) if the substance is a precursor to a
- 34 controlled substance and delete substances from subdivision (a).
- 35 However, no regulation adding or deleting a substance shall have
- 36 any effect beyond March 1 of the year following the calendar year
- 37 during which the regulation was adopted.
- 38 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
- 39 person or entity in this state, prior to selling, transferring, or
- 40 otherwise furnishing any substance specified in subdivision (a) to

1 any person or business entity in this state or any other state, shall
2 require (A) a letter of authorization from that person or business
3 entity that includes the currently valid business license number or
4 federal Drug Enforcement Administration (DEA) registration
5 number, the address of the business, and a full description of how
6 the substance is to be used, and (B) proper identification from the
7 purchaser. The manufacturer, wholesaler, retailer, or other person
8 or entity in this state shall retain this information in a readily
9 available manner for three years. The requirement for a full
10 description of how the substance is to be used does not require the
11 person or business entity to reveal their chemical processes that
12 are typically considered trade secrets and proprietary information.

13 (B) For the purposes of this paragraph, “proper identification”
14 for in-state or out-of-state purchasers includes two or more of the
15 following: federal tax identification number; seller’s permit
16 identification number; city or county business license number;
17 license issued by the ~~California Department of Health Services~~
18 *State Department of Public Health*; registration number issued by
19 the ~~Federal~~ federal Drug Enforcement Administration; precursor
20 business permit number issued by the Bureau of Narcotic
21 Enforcement of the ~~California~~ Department of Justice; driver’s
22 license; or other identification issued by a state.

23 (2) (A) Any manufacturer, wholesaler, retailer, or other person
24 or entity in this state that exports a substance specified in
25 subdivision (a) to any person or business entity located in a foreign
26 country shall, on or before the date of exportation, submit to the
27 Department of Justice a notification of that transaction, which
28 notification shall include the name and quantity of the substance
29 to be exported and the name, address, and, if assigned by the
30 foreign country or subdivision thereof, business identification
31 number of the person or business entity located in a foreign country
32 importing the substance.

33 (B) The department may authorize the submission of the
34 notification on a monthly basis with respect to repeated, regular
35 transactions between an exporter and an importer involving a
36 substance specified in subdivision (a), if the department determines
37 that a pattern of regular supply of the substance exists between the
38 exporter and importer and that the importer has established a record
39 of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian, or a retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

1 (5) A state-licensed health care facility that administers or
2 furnishes a substance to its patients.

3 ~~(6) (A) Any sale, transfer, furnishing, or receipt of any product~~
4 ~~that contains ephedrine, pseudoephedrine, norpseudoephedrine,~~
5 ~~or phenylpropanolamine and which is lawfully sold, transferred,~~
6 ~~or furnished over the counter without a prescription pursuant to~~
7 ~~the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et~~
8 ~~seq.) or regulations adopted thereunder. However, this section~~
9 ~~shall apply to preparations in solid or liquid dosage form, except~~
10 ~~pediatric liquid forms, as defined, containing ephedrine,~~
11 ~~pseudoephedrine, norpseudoephedrine, or phenylpropanolamine~~
12 ~~where the individual transaction involves more than three packages~~
13 ~~or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,~~
14 ~~or phenylpropanolamine.~~

15 ~~(B)~~
16 ~~(6) Any ephedrine, pseudoephedrine, norpseudoephedrine, or~~
17 ~~phenylpropanolamine product sale, transfer, furnishing, or receipt~~
18 ~~of a product specified in Section 11375.5 pursuant to prescription~~
19 ~~shall not be subject to the reporting or permitting requirements~~
20 ~~of this section, unless a product is subsequently removed from~~
21 ~~exemption pursuant to Section 814 of Title 21 of the United States~~
22 ~~Code Code, in which case the product shall similarly no longer be~~
23 ~~exempt from any state reporting or permitting requirement,~~
24 ~~requirement unless otherwise reinstated pursuant to subdivision~~
25 ~~(d) or (e) of Section 814 of Title 21 of the United States Code as~~
26 ~~an exempt product.~~

27 (7) The sale, transfer, furnishing, or receipt of any betadine or
28 povidone solution with an iodine content not exceeding 1 percent
29 in containers of eight ounces or less, or any tincture of iodine not
30 exceeding 2 percent in containers of one ounce or less, that is sold
31 over the counter.

32 (8) Any transfer of a substance specified in subdivision (a) for
33 purposes of lawful disposal as waste.

34 (f) (1) Any person specified in subdivision (a) or (d) who does
35 not submit a report as required by that subdivision or who
36 knowingly submits a report with false or fictitious information
37 shall be punished by imprisonment in a county jail not exceeding
38 six months, by a fine not exceeding five thousand dollars (\$5,000),
39 or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both the fine and imprisonment.

~~(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it~~ It is unlawful for any manufacturer, wholesaler, retailer, or other person *or entity in this state* to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

~~(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it~~ It is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

~~(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine; or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine; other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.); or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.~~

~~(4)~~

(3) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(h) For the purposes of this article, the following terms have the following meanings:

(1) “Drug store” is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) “General merchandise store” is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) “Grocery store” is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) “Pediatric liquid” means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of ~~phenylpropanolamine or pseudoephedrine~~ *any product specified in Section 11375.5* per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) “Retail distributor” means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, ~~as which include being a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, any product specified in Section 11375.5 upon prescription only, except for pediatric liquids,~~ either directly to walk-in customers or in face-to-face transactions by direct sales. “Retail distributor” includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) ~~“Sale for personal use” means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). “Sale for personal use” also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.~~

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 2. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) (1) (A) Any manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. For any substance added to the list set forth in subdivision (a) of Section 11100 on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for a permit for a period not to exceed six months from the listing date of the substance.

(B) An intracompany transfer does not require a permit if the transferor is a permittee. Transfers between company partners or between a company and an analytical laboratory do not require a permit if the transferor is a permittee and a report as to the nature and extent of the transfer is made to the Department of Justice pursuant to Section 11100 or 11100.1.

(C) This paragraph shall not apply to any manufacturer, wholesaler, or wholesale distributor who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice; any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian; any state-licensed health care facility, physician, dentist, podiatrist, veterinarian, or veterinary food-animal drug retailer licensed by the California State Board of Pharmacy that administers or furnishes a substance to a patient; or any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(D) This paragraph shall not apply to the sale, transfer, furnishing, or receipt of any betadine or povidone solution with

1 an iodine content not exceeding 1 percent in containers of eight
2 ounces or less, or any tincture of iodine not exceeding 2 percent
3 in containers of one ounce or less, that is sold over the counter.

4 ~~(2) Except as provided in paragraph (3), no permit shall be~~
5 ~~required of any manufacturer, wholesaler, retailer, or other person~~
6 ~~or entity for the sale, transfer, furnishing, or obtaining of any~~
7 ~~product which contains ephedrine, pseudoephedrine,~~
8 ~~norpseudoephedrine, or phenylpropanolamine and which is~~
9 ~~lawfully sold, transferred, or furnished over the counter without a~~
10 ~~prescription or by a prescription pursuant to the federal Food,~~
11 ~~Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations~~
12 ~~adopted thereunder.~~

13 ~~(3)~~

14 (2) A permit shall be required for the sale, transfer, furnishing,
15 or obtaining of preparations in solid or liquid dosage form
16 containing ~~ephedrine, pseudoephedrine, norpseudoephedrine, or~~
17 ~~phenylpropanolamine, unless (A) the transaction involves the sale~~
18 ~~of ephedrine, pseudoephedrine, norpseudoephedrine, or~~
19 ~~phenylpropanolamine products by retail distributors as defined by~~
20 ~~this article over the counter and without a prescription, or (B) the~~
21 ~~transaction is made by a person or business entity exempted from~~
22 ~~the permitting requirements of this subdivision under paragraph~~
23 ~~(4): any product as specified in Section 11375.5.~~

24 (b) (1) The department shall provide application forms, which
25 are to be completed under penalty of perjury, in order to obtain
26 information relating to the identity of any applicant applying for
27 a permit, including, but not limited to, the business name of the
28 applicant or the individual name, and if a corporate entity, the
29 names of its board of directors, the business in which the applicant
30 is engaged, the business address of the applicant, a full description
31 of any substance to be sold, transferred, or otherwise furnished or
32 to be obtained, the specific purpose for the use, sale, or transfer of
33 those substances specified in subdivision (a) of Section 11100, the
34 training, experience, or education relating to this use, and any
35 additional information requested by the department relating to
36 possible grounds for denial as set forth in this section, or by
37 applicable regulations adopted by the department.

38 (2) The requirement for the specific purpose for the use, sale,
39 or transfer of those substances specified in subdivision (a) of
40 Section 11100 does not require applicants or permittees to reveal

1 their chemical processes that are typically considered trade secrets
2 and proprietary business information.

3 (c) Applicants and permittees shall authorize the department,
4 or any of its duly authorized representatives, as a condition of
5 being permitted, to make any examination of the books and records
6 of any applicant, permittee, or other person, or visit and inspect
7 the business premises of any applicant or permittee during normal
8 business hours, as deemed necessary to enforce this chapter.

9 (d) An application may be denied, or a permit may be revoked
10 or suspended, for reasons which include, but are not limited to,
11 the following:

12 (1) Materially falsifying an application for a permit or an
13 application for the renewal of a permit.

14 (2) If any individual owner, manager, agent, representative, or
15 employee for the applicant who has direct access, management,
16 or control for any substance listed under subdivision (a) of Section
17 11100, is or has been convicted of a misdemeanor or felony relating
18 to any of the substances listed under subdivision (a) of Section
19 11100, any misdemeanor drug-related offense, or any felony under
20 the laws of this state or the United States.

21 (3) Failure to maintain effective controls against the diversion
22 of precursors to unauthorized persons or entities.

23 (4) Failure to comply with this article or any regulations of the
24 department adopted thereunder.

25 (5) Failure to provide the department, or any duly authorized
26 federal or state official, with access to any place for which a permit
27 has been issued, or for which an application for a permit has been
28 submitted, in the course of conducting a site investigation,
29 inspection, or audit; or failure to promptly produce for the official
30 conducting the site investigation, inspection, or audit any book,
31 record, or document requested by the official.

32 (6) Failure to provide adequate documentation of a legitimate
33 business purpose involving the applicant's or permittee's use of
34 any substance listed in subdivision (a) of Section 11100.

35 (7) Commission of any act which would demonstrate actual or
36 potential unfitness to hold a permit in light of the public safety and
37 welfare, which act is substantially related to the qualifications,
38 functions, or duties of a permitholder.

39 (8) If any individual owner, manager, agent, representative, or
40 employee for the applicant who has direct access, management,

1 or control for any substance listed under subdivision (a) of Section
2 11100, willfully violates or has been convicted of violating, any
3 federal, state, or local criminal statute, rule, or ordinance regulating
4 the manufacture, maintenance, disposal, sale, transfer, or furnishing
5 of any of those substances.

6 (e) Notwithstanding any other provision of law, an investigation
7 of an individual applicant's qualifications, or the qualifications of
8 an applicant's owner, manager, agent, representative, or employee
9 who has direct access, management, or control of any substance
10 listed under subdivision (a) of Section 11100, for a permit may
11 include review of his or her summary criminal history information
12 pursuant to Sections 11105 and 13300 of the Penal Code, including,
13 but not limited to, records of convictions, regardless of whether
14 those convictions have been expunged pursuant to Section 1203.4
15 of the Penal Code, and any arrests pending adjudication.

16 (f) The department may retain jurisdiction of a canceled or
17 expired permit in order to proceed with any investigation or
18 disciplinary action relating to a permittee.

19 (g) The department may grant permits on forms prescribed by
20 it, which shall be effective for not more than one year from the
21 date of issuance and which shall not be transferable. Applications
22 and permits shall be uniform throughout the state, on forms
23 prescribed by the department.

24 (h) Each applicant shall pay at the time of filing an application
25 for a permit a fee determined by the department which shall not
26 exceed the application processing costs of the department.

27 (i) A permit granted pursuant to this article may be renewed
28 one year from the date of issuance, and annually thereafter,
29 following the timely filing of a complete renewal application with
30 all supporting documents, the payment of a permit renewal fee not
31 to exceed the application processing costs of the department, and
32 a review of the application by the department.

33 (j) Selling, transferring, or otherwise furnishing or obtaining
34 any substance specified in subdivision (a) of Section 11100 without
35 a permit is a misdemeanor or a felony.

36 (k) (1) No person under 18 years of age shall be eligible for a
37 permit under this section.

38 (2) No business for which a permit has been issued shall employ
39 a person under 18 years of age in the capacity of a manager, agent,
40 or representative.

(l) (1) An applicant, or an applicant's employees who have direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for an initial permit shall submit with the application one set of 10-print fingerprints for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant, unless the applicant's employees are exempted from this requirement by the Department of Justice. These exemptions may only be obtained upon the written request of the applicant.

(2) In the event of subsequent changes in ownership, management, or employment, the permittee shall notify the department in writing within 15 calendar days of the changes, and shall submit one set of 10-print fingerprints for each individual not previously fingerprinted under this section.

SEC. 3. Section 11375.5 is added to the Health and Safety Code, to read:

11375.5. (a) Any person who obtains any substance specified in subdivision (b), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(b) This section shall apply to any material, compound, mixture, or preparation containing ephedrine, pseudoephedrine, norpseudoephedrine, phenylpropanolamine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine, or chloropseudoephedrine, except for pediatric liquid forms as specified in subdivision (h) of Section 11100.

(c) This section shall not be construed to prevent prosecution under any other applicable law.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: SB 315

VERSION: As Introduced February 14, 2011

AUTHOR: Wright

SPONSOR: Attorney General

COMMITTEE RECOMMENDED POSITION: Support

SUBJECT: Controlled Substances

Affected Sections: Amend Sections 11100 and 11106 of, and add Section 11375.5 to the Health and Safety Code

CURRENT STATUS: Referred to Senate Health Committee

EXISTING LAW:

Health and Safety Code Section 11100:

1. Requires any manufacturer, wholesaler, retailer or other person or entity in this state that sells, transfers or otherwise furnishes specified substances, to report to the Department of Justice (DOJ). These substances are controlled substances and/or chemical precursors for manufacture of illicit drugs.
2. Specifies that such entities, prior to selling, transferring or otherwise furnishing any specified substance shall require a letter of authorization that includes the currently valid business license or DEA registration, and the address of the business and proper identification of the purchaser. Information collected must also include how the substance is to be used, and specifies that this information shall be maintained for three years.
3. Defines proper identification to include two of the following:
 - a. Federal tax identification number
 - b. Seller's permit identification number
 - c. City or county business license number
 - d. State Department of Public Health License
 - e. Registration issued by federal Drug Enforcement Administration
 - f. Precursor business permit number issued by the Bureau of Narcotic Enforcement
 - g. Driver's license
 - h. Other identification issued by a state.
4. Requires any entity that exports a substance, as provided in this section, to any person or business located in a foreign country to notify the DOJ of the transaction and specifies that the notification shall include the name and quantity of the substance, the name, address and business identification number (if assigned by the foreign country).
5. Specifies that the DOJ may require such reports on a monthly basis.

6. Requires reporting not less than 21 days in advance of a transaction to any entity in the US or on a monthly basis as determined by the DOJ.
7. Requires the seller to affix his or her signature or provide other identification to the purchaser and specifies requirement for the use of a common carrier.
8. Specifies exemptions to these provisions for the following:
 - a. Pharmacist or other authorized person who sells or furnishes a substance pursuant to a prescription
 - b. Any physician, dentist, podiatrist or veterinarian who administers or furnishes a substance to his or her patients.
 - c. Manufacturers and board licensed wholesalers from these provisions as specified, but requires records of suspicious sales and transfers as determined by the DOJ.
 - d. Any analytical research facility that is registered with the federal DEA.
 - e. A state-licensed health care facility that administers or furnishes a substance to its patients.
 - f. Specified products that are sold over the counter without a prescription, unless the individual transaction involves more than three packages or nine grams of the substance.
 - g. Any transfer or a substance for lawful disposal as waste.
9. Creates penalties for non-compliance, including jail time and fines as specified.
10. Specifies the conditions under which it is unlawful to sell, transfer or otherwise furnish a substance to a person under 18 years of age.
11. Defines several terms for purposes of this article.
12. Specifies that these provisions preempt all local ordinances or regulations governing the sale of specified products.

Health and Safety Code Section 11106:

1. Requires any business that furnishes substances pursuant to H&SC 11100 to obtain a permit from the Department of Justice as specified and identifies the following exemptions:
 - a. Entities licensed by the board that are also registered by the DEA.
 - b. Pharmacists or other authorized persons furnishing the substance pursuant to a prescription
 - c. Any physician, dentist, podiatrist or veterinarian who administers or furnishes a substance to his or her patients
 - d. Any state-licensed health care facility, physician, dentist, podiatrist, veterinarian, or veterinary food-animal drug retailer licensed by the board.
 - e. Any analytical research facility that is registered with the federal DEA.
 - f. Sales, etc. or receipt of betadine or povidone solution as specified.
 - g. Specified products that are sold over the counter without a prescription.
2. Defines the application process and required information and training necessary to qualify for a permit.
3. Authorizes the department to examine the records of licensees, identifies violations and sets forth the consequences for the violations.
4. Requires and defines the process to notice changes in ownership, management or employment.

THIS BILL WOULD:

Health and Safety Code Section 11100

1. Remove the provision allowing for the sale of products containing ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine over the counter without a prescription.
2. Specify that it is unlawful for any entity to sell, transfer or otherwise furnish any of the substances provided in this section.
3. Specify that it is unlawful for any person under 18 to possess any of the substances provided in this section.
4. Remove the provision exempting specified products that are sold over the counter without a prescription, unless the individual transaction involves more than three packages or nine grams of the substance.
5. Modify the definition of "Pediatric liquid" and "retail distributor."
6. Remove the "sale for personal use" definition.

Health and Safety Code Section 11106

Specify that a permit will be required for the sale, transfer, furnishing or obtaining the preparations in solid or liquid form of products referenced in H&SC 11375.5 (generally products contain ephedrine).

Health and Safety Code Section 11375.5

Require a prescription to obtain any of the products listed in the section - - all products containing ephedrine.

AUTHOR'S INTENT:

"SB 315 will significantly reduce the production of methamphetamine in California by making pseudoephedrine, the main ingredient used to manufacture methamphetamine, available only to patients who obtain a doctor's prescription."

Information provided by the author's office states that retailers currently keep all ephedrine-containing products behind the counter and indicate that anyone who makes a purchase must show identification and the purchase is logged either by paper or electronically. The author's office also notes that this legislation is modeled after similar and very successful laws passed in Oregon and Mississippi which resulted in a huge drop in meth labs and meth production in those state.

COMMENTS:

During its meeting, the Legislation and Regulation Committee heard a presentation from Kent Shaw, representing the Office of the Attorney General, the sponsor of this measure. Mr. Kent discussed the methamphetamine problem in California and stated that pseudoephedrine is the essential precursor for making methamphetamine. Mr. Shaw indicated that pseudoephedrine purchased (smurfed) from retail outlets in California is the exclusive source of this precursor and indicated that the only viable method to eliminate methamphetamine production in California is to control this precursor by requiring a prescription. Mr. Shaw reviewed similar efforts by other states including Oregon and Mississippi which has resulted in a significant reduction in methamphetamine labs and methamphetamine production in those states.

In 2006, Oregon passed a law similar to this measure. In early April 2011, the board received a letter from the Oregon State Pharmacy Association. This letter is strongly encouraging the board to support SB 315 and stated smurfing and meth labs have almost been eliminated in Oregon and that there have been few complaints and little to no public outcry.

The board also received a copy of a letter of support from the Mississippi Independent Pharmacists Association. This letter notes, "As you are aware the Mississippi State Legislature passed similar legislation in 2010, and the Mississippi Independent Pharmacies Association worked alongside of the Mississippi Bureau of Narcotics for the final passage of this legislation." Further, "Since July 2009 Mississippi has seen a dramatic reduction of meth labs and purchasing of pseudoephedrine products for illegal drug use. At the same time, the patients have not suffered in their need for legal use and purchasing of pseudoephedrine."

PREVIOUS/RELATED LEGISLATION:

Prior to recent amendments, SB 260 (Solorio) contains similar provisions to the proposed changes in H&SC 11100.

AB 1280 (Hill, 2011), This proposal would require retailers to report ephedrine sales as specified.

FISCAL IMPACT:

The board could experience an increase in the number of investigations resulting from this change. However, if the board is able to fill all of its vacant inspector positions, it is anticipated that any minor increase in investigations could be absorbed within existing resources.

SUPPORT/OPPOSITION:

Support

California Fraternal Order of Police
California Narcotics Officers Association
California Police Chiefs Association; Long Beach Police Officers Assn
Los Angeles County Professional Peace Officers Association
Santa Ana Police Officers Association
California State Conference of the National Association for the Advancement of Colored People
County Alcohol and Drug Program Administrators Association of California
California State Sheriffs' Association
California District Attorneys Association
Mississippi Independent Pharmacists Association

Opposition

Rite Aid
Association of California Life and Health Insurance Companies
California Retailers Association
National Association of Chain Drug Stores

Consumer Healthcare Products Association
Reckitt Benckiser Pharmaceuticals
Health Net
Los Angeles Society of Allergy, Asthma & Clinical Immunology
Peace Officers Research Association of California
Drug Policy Alliance
California Grocers Association
Bayer Health Care
BIOCOM
Anthem Blue Cross
Johnson & Johnson
California Healthcare Institute
California Association of Health Plans
California Chapter of the Asthma and Allergy Foundation of America

HISTORY:

Date	Action
Apr. 26	From committee: Do pass and re-refer to Com. on HEALTH. (Ayes 5. Noes 2.) (April 26). Re-referred to Com. on HEALTH.
Apr. 7	Set for hearing April 26.
Apr. 6	Set, second hearing. Further hearing to be set.
Mar. 31	Set for hearing April 12.
Mar. 30	Set, first hearing. Further hearing to be set.
Mar. 23	Set for hearing April 5.
Mar. 15	Withdrawn from committee. Re-referred to Coms. on PUB. S. and HEALTH.
Feb. 24	Referred to Coms. on HEALTH and PUB. S.
Feb. 15	From printer. May be acted upon on or after March 17.
Feb. 14	Introduced. Read first time. To Com. on RLS. for assignment. To print.



Wednesday, April 6, 2011

California Department of Consumer Affairs
Board of Pharmacy
1625 N Market Blvd, N219
Sacramento, CA 95834

RE: PSEUDOEPHEDRINE & D-METHAMPHETAMINE LABORATORIES; SB 315

The Oregon State Pharmacy Association strongly encourages the California Board of Pharmacy to support California SB 315, reclassifying pseudoephedrine as a prescription only medication. Pseudoephedrine is the key ingredient necessary to make d-methamphetamine, commonly known as meth.

In 2006, Congress passed legislation restricting pseudoephedrine, requiring it be kept behind-the-counter and logging sales. That legislation, known as the Combat Methamphetamine Epidemic Act (CMEA), dramatically reduced the incidence of meth labs throughout the nation. However, as we predicted, meth addicts quickly found a way around the CMEA through "smurfing." The tragic result is the recent resurgence of extremely dangerous meth labs, posing unacceptable risks to our families, neighborhoods, and the environment.

In contrast, Oregon passed legislation, which took effect in 2006, making pseudoephedrine a prescription drug. Since then, there have been few complaints, and little to no public outcry. Smurfing and meth labs have almost been eliminated in Oregon. We no longer have to guess what works and what doesn't.

In the spring of 2008, OSPA conducted a survey of our membership, confirming that Oregon pharmacists strongly prefer pseudoephedrine as a prescription drug. It eliminates the burdensome behind-the-counter classification and logging requirements that we previously had. Most of the nation is still following the CMEA, with disappointing results.

Legislative action is needed now, making pseudoephedrine a prescription drug, which will drastically reduce the availability of pseudoephedrine, the key ingredient necessary to manufacture d-methamphetamine.

Respectfully,

Brian Crook

Brian Crook, R.Ph.
President
Oregon State Pharmacy Association

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 360

Introduced by Senator DeSaulnier

February 15, 2011

An act to amend Section 6929 of the Family Code, and to amend Sections 11054, 11055, 11056, 11057, 11161.5, 11162.1, 11165, 11165.1, 11212, 11350, 11351, 11352, 11353, 11354, 11355, 11377, 11378, 11379, 11379.2, 11839.2, and 11875 of, and to add Sections 11165.2 and 11165.3 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, DeSaulnier. Controlled Substance Utilization Review and Evaluation System.

Existing law classifies certain controlled substances into designated schedules. Under existing law, unlawful possession of specified controlled substances is either a misdemeanor or a felony. Existing law requires the Department of Justice, contingent upon the availability of adequate funds from various funds related to health care, as specified, to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

This bill would revise Schedule I and Schedule II to add additional opiates, revise Schedule III to add additional depressants, anabolic steroid products, and materials, compounds, mixtures, or preparations containing chorionic gonadotropin, a hormone, and Schedule IV to add

additional depressants and stimulants. By revising the definition of crimes, the bill would impose a state-mandated local program.

Existing law defines a security printer as a person approved to produce controlled substance prescription forms. Existing law requires that prescription forms for controlled substance prescriptions be obtained from security printers approved by the Department of Justice. These provisions authorize the department to approve a security printer who provides specified information to the department, including the location, names, and titles of the applicant's agent for service of process, all principal corporate officers, if any, and all managing general partners, if any. Existing law also requires those persons to provide a signed statement indicating whether they have ever been convicted of, or pled no contest to, a violation of any law or ordinance. Existing law authorizes the department to revoke its approval of a security printer for a violation of these provisions or action that would permit a denial.

This bill would expand those requirements imposed on an applicant for approval as a security printer to additionally require the applicant to provide the location, names, and titles of any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor of the applicant who has direct access to, or management or control of, controlled substance prescription forms and require those persons to submit the signed statement described above. The bill would also make conforming and related changes. In addition, the bill would require that controlled substance ~~prescriptions~~ *prescription forms* provided in person be restricted to established customers. The bill would require security printers to obtain photo identification from the customer and maintain a log of the information, and to report any theft or loss of controlled substance ~~prescriptions~~ *prescription forms* to the department via fax or e-mail within 24 hours of the incident. The bill would also require that controlled substance ~~prescriptions~~ *prescription forms* be shipped only to the prescriber's address on file and verified with the federal Drug Enforcement Administration or the Medical Board of California. ~~The bill would authorize the department to impose restrictions, sanctions, or penalties against security printers who are not in compliance with provisions governing security printers, as specified. The bill would specify penalties for certain violations, including, among others, failure to comply with security printer guidelines, failure to take reasonable precautions to prevent any dishonest act or illegal activity related to the access and control of~~

security prescription forms, and theft or fraudulent use of a prescriber's identity in order to obtain security prescription forms.

Existing law governs the prescription forms for controlled substances. Among other things, the forms are required to include the preprinted name, category of licensure, license number, and federal controlled substance registration number of the prescribing practitioner.

This bill would also require the forms to include the address of the prescribing practitioner. The bill would make an additional change relating to forms ordered for use by prescribers when treating patients in licensed health care facilities or certain clinics that are exempt from other requirements governing these forms. The bill would provide that prescription forms that are not in compliance with these provisions shall not be accepted after July 1, 2012.

The bill would establish a specified process by which a licensed health care practitioner or a pharmacist may obtain approval to access information stored on the Internet regarding the controlled substance history of a patient, as specified.

The bill would require that the theft or loss of ~~prescription information~~ *forms* be reported immediately to the department, as specified. The bill would also require the department to conduct audits of the CURES Prescription Drug Monitoring System and authorize the department to establish a system for issuing citations, and for assessing and imposing administrative fines, not to exceed \$2,500 for each violation, that would be deposited in the CURES Program Special Fund, for violations of the program, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6929 of the Family Code is amended to
- 2 read:
- 3 6929. (a) As used in this section:
- 4 (1) "Counseling" means the provision of counseling services
- 5 by a provider under a contract with the state or a county to provide

1 alcohol or drug abuse counseling services pursuant to Part 2
2 (commencing with Section 5600) of Division 5 of the Welfare and
3 Institutions Code or pursuant to Division 10.5 (commencing with
4 Section 11750) of the Health and Safety Code.

5 (2) “Drug or alcohol” includes, but is not limited to, any
6 substance listed in any of the following:

7 (A) Section 380 or 381 of the Penal Code.

8 (B) Division 10 (commencing with Section 11000) of the Health
9 and Safety Code.

10 (C) Subdivision (f) of Section 647 of the Penal Code.

11 (3) “LAAM” means levoalphacetylmethadol as specified in
12 paragraph (12) of subdivision (c) of Section 11055 of the Health
13 and Safety Code.

14 (4) “Professional person” means a physician and surgeon,
15 registered nurse, psychologist, clinical social worker, marriage
16 and family therapist, marriage and family therapist registered intern
17 when appropriately employed and supervised pursuant to Section
18 4980.43 of the Business and Professions Code, psychological
19 assistant when appropriately employed and supervised pursuant
20 to Section 2913 of the Business and Professions Code, or associate
21 clinical social worker when appropriately employed and supervised
22 pursuant to Section 4996.18 of the Business and Professions Code.

23 (b) A minor who is 12 years of age or older may consent to
24 medical care and counseling relating to the diagnosis and treatment
25 of a drug- or alcohol-related problem.

26 (c) The treatment plan of a minor authorized by this section
27 shall include the involvement of the minor’s parent or guardian,
28 if appropriate, as determined by the professional person or
29 treatment facility treating the minor. The professional person
30 providing medical care or counseling to a minor shall state in the
31 minor’s treatment record whether and when the professional person
32 attempted to contact the minor’s parent or guardian, and whether
33 the attempt to contact the parent or guardian was successful or
34 unsuccessful, or the reason why, in the opinion of the professional
35 person, it would not be appropriate to contact the minor’s parent
36 or guardian.

37 (d) The minor’s parent or guardian is not liable for payment for
38 any care provided to a minor pursuant to this section, except that
39 if the minor’s parent or guardian participates in a counseling
40 program pursuant to this section, the parent or guardian is liable

for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug- or alcohol-related problem of a minor child, the physician shall disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure.

SEC. 2. Section 11054 of the Health and Safety Code is amended to read:

11054. (a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) 1-(1-Phenylcyclohexyl)pyrrolidine.
- (2) 1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine.
- (3) 1-[1-(2-Thienyl)cyclohexyl]piperidine.
- (4) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine.
- (5) 1-Methyl-4-phenyl-4-propionoxypiperidine.
- (6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine.
- (7) 2,5-Dimethoxy-4-ethylamphetamine.
- (8) 2,5-Dimethoxyamphetamine.
- (9) 3,4,5-Trimethoxyamphetamine.
- (10) 3,4-Methylenedioxamphetamine.
- (11) 3,4-Methylenedioxymethamphetamine.

- 1 (12) 3,4-Methylenedioxy-N-ethylamphetamine.
- 2 (13) 3-Methylfentanyl.
- 3 (14) 3-Methylthiofentanyl.
- 4 (15) 4-Bromo-2,5-dimethoxyamphetamine.
- 5 (16) 4-Bromo-2,5-dimethoxyphenethylamine.
- 6 (17) 4-Methoxyamphetamine.
- 7 (18) 4-Methyl-2,5-dimethoxyamphetamine.
- 8 (19) 4-Methylaminorex (cis isomer).
- 9 (20) 5-Methoxy-3,4-methylenedioxyamphetamine.
- 10 (21) 5-Methoxy-N,N-diisopropyltryptamine.
- 11 (22) Acetylmethadol.
- 12 (23) Allylprodine.
- 13 (24) Alphacetylmethadol (except levoalphacetylmethadol, also
- 14 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
- 15 LAAM).
- 16 (25) Alphameprodine.
- 17 (26) Alphamethadol.
- 18 (27) Alpha-methylfentanyl.
- 19 (28) Alpha-methylthiofentanyl.
- 20 (29) Alpha-methyltryptamine.
- 21 (30) Aminorex.
- 22 (31) Benzethidine.
- 23 (32) Betacetylmethadol.
- 24 (33) Beta-hydroxy-3-methylfentanyl.
- 25 (34) Beta-hydroxyfentanyl.
- 26 (35) Betameprodine.
- 27 (36) Betamethadol.
- 28 (37) Betaprodine.
- 29 (38) Cathinone.
- 30 (39) Clonitazene.
- 31 ~~(42)~~
- 32 (40) Dextromoramide.
- 33 (41) Diampromide.
- 34 (42) Diethylthiambutene.
- 35 (43) Difenoxin.
- 36 (44) Dimenoxadol.
- 37 (45) Dimepheptanol.
- 38 (46) Dimethylthiambutene.
- 39 (47) Dioxaphetyl butyrate.
- 40 (48) Dipipanone.

- 1 (49) Ethylmethylthiambutene.
- 2 (50) Etonitazene.
- 3 (51) Etoxeridine.
- 4 (52) Furethidine.
- 5 (53) Hydroxypethidine.
- 6 (54) Ketobemidone.
- 7 (55) Levomoramide.
- 8 (56) Levophenacymorphan.
- 9 (57) Methcathinone.
- 10 (58) Morpheridine.
- 11 (59) N,N-Dimethylamphetamine.
- 12 (60) N-Benzylpiperazine.
- 13 (61) N-Ethyl-1-phenylcyclohexylamine.
- 14 (62) N-Hydroxy-3-4-methylenedioxyamphetamine.
- 15 (63) Noracymethadol.
- 16 (64) Norlevorphanol.
- 17 (65) Normethadone.
- 18 (66) Norpipanone.
- 19 (67) Para-Fluorofentanyl.
- 20 (68) Parahexyl.
- 21 (69) Phenadoxone.
- 22 (70) Phenampromide.
- 23 (71) Phenomorphan.
- 24 (72) Phenoperidine.
- 25 (73) Piritramide.
- 26 (74) Proheptazine.
- 27 (75) Properidine.
- 28 (76) Propiram.
- 29 (77) Racemoramide.
- 30 (78) Thiofentanyl.
- 31 (79) Tilidine.
- 32 (80) Trimeperidine.
- 33 (81) Any substance which contains any quantity of
- 34 acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a
- 35 derivative thereof.
- 36 (82) Any substance which contains any quantity of the thiophene
- 37 analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl]
- 38 acetanilide) or a derivative thereof.
- 39 (83) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 40 (84) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-Oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Drotebanol.
- (10) Etorphine (except hydrochloride salt).
- (11) Heroin.
- (12) Hydromorphenol.
- (13) Methyldesorphine.
- (14) Methyldihydromorphine.
- (15) Morphine methylbromide.
- (16) Morphine methylsulfonate.
- (17) Morphine-N-Oxide.
- (18) Myrophine.
- (19) Nicocodeine.
- (20) Nicomorphine.
- (21) Normorphine.
- (22) Pholcodine.
- (23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term “isomer” includes the optical, position, and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.

- 1 (2) 2,5-dimethoxyamphetamine—Some trade or other names:
2 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- 3 (3) 4-methoxyamphetamine—Some trade or other names:
4 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ,
5 paramethoxyamphetamine, PMA.
- 6 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.
- 7 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other
8 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine;
9 “DOM”; and “STP.”
- 10 (6) 3,4-methylenedioxy amphetamine.
- 11 (7) 3,4,5-trimethoxy amphetamine.
- 12 (8) Bufotenine—Some trade or other names:
13 3-(beta-dimethylaminoethyl)-5-hydroxyindole;
14 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserotonin,
15 5-hydroxy-N,N-dimethyltryptamine; mappine.
- 16 (9) Diethyltryptamine—Some trade or other names:
17 N,N-Diethyltryptamine; DET.
- 18 (10) Dimethyltryptamine—Some trade or other names: DMT.
- 19 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,
20 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido
21 [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- 22 (12) Lysergic acid diethylamide.
- 23 (13) Marijuana.
- 24 (14) Mescaline.
- 25 (15) Peyote—Meaning all parts of the plant presently classified
26 botanically as *Lophophora williamsii* Lemaire, whether growing
27 or not, the seeds thereof, any extract from any part of the plant,
28 and every compound, manufacture, salts, derivative, mixture, or
29 preparation of the plant, its seeds or extracts (interprets 21 U.S.C.
30 Sec. 812(c), Schedule 1(c)(12)).
- 31 (16) N-ethyl-3-piperidyl benzilate.
- 32 (17) N-methyl-3-piperidyl benzilate.
- 33 (18) Psilocybin.
- 34 (19) Psilocyn.
- 35 (20) Tetrahydrocannabinols. Synthetic equivalents of the
36 substances contained in the plant, or in the resinous extractives of
37 Cannabis, sp. and/or synthetic substances, derivatives, and their
38 isomers with similar chemical structure and pharmacological
39 activity such as the following: delta 1 cis or trans
40 tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans

1 tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or
2 trans tetrahydrocannabinol, and its optical isomers.

3 (Since nomenclature of these substances is not internationally
4 standardized, compounds of these structures, regardless of
5 numerical designation of atomic positions covered).

6 (21) Ethylamine analog of phencyclidine—Some trade or other
7 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)
8 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine,
9 PCE.

10 (22) Pyrrolidine analog of phencyclidine—Some trade or other
11 names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

12 (23) Thiophene analog of phencyclidine—Some trade or other
13 names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog
14 of phencyclidine, TPCP, TCP.

15 (e) Depressants. Unless specifically excepted or unless listed
16 in another schedule, any material, compound, mixture, or
17 preparation which contains any quantity of the following substances
18 having a depressant effect on the central nervous system, including
19 its salts, isomers, and salts of isomers whenever the existence of
20 those salts, isomers, and salts of isomers is possible within the
21 specific chemical designation:

22 (1) Mecloqualone.

23 (2) Methaqualone.

24 (3) Gamma hydroxybutyric acid (also known by other names
25 such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate;
26 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate),
27 including its immediate precursors, isomers, esters, ethers, salts,
28 and salts of isomers, esters, and ethers, including, but not limited
29 to, gammabutyrolactone, for which an application has not been
30 approved under Section 505 of the Federal Food, Drug, and
31 Cosmetic Act (21 U.S.C. Sec. 355).

32 (f) Unless specifically excepted or unless listed in another
33 schedule, any material, compound, mixture, or preparation which
34 contains any quantity of the following substances having a
35 stimulant effect on the central nervous system, including its
36 isomers:

37 (1) Cocaine base.

38 (2) Fenethylline, including its salts.

39 (3) N-Ethylamphetamine, including its salts.

SEC. 3. Section 11055 of the Health and Safety Code is amended to read:

11055. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(A) Raw opium.

(B) Opium extracts.

(C) Opium fluid extracts.

(D) Powdered opium.

(E) Granulated opium.

(F) Tincture of opium.

(G) Codeine.

(H) Ethylmorphine.

(I) Hydrocodone.

(J) Hydromorphone.

(K) Metopon.

(L) Morphine.

(M) Oxycodone.

(N) Oxymorphone.

(O) Thebaine.

(2) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(6) Cocaine, except as specified in Section 11054.

- 1 (7) Ecgonine, whether natural or synthetic, or any salt, isomer,
2 derivative, or preparation thereof.
- 3 (c) Opiates. Unless specifically excepted or unless in another
4 schedule, any of the following opiates, including its isomers, esters,
5 ethers, salts, and salts of isomers, esters, and ethers whenever the
6 existence of those isomers, esters, ethers, and salts is possible
7 within the specific chemical designation, dextrorphan and
8 levopropoxyphene excepted:
- 9 (1) Alfentanil.
10 (2) Alphaprodine.
11 (3) Anileridine.
12 (4) Bezitramide.
13 (5) Bulk dextropropoxyphene (nondosage forms).
14 (6) Carfentanil.
15 (7) Dihydrocodeine.
16 (8) Diphenoxylate.
17 (9) Etorphine HCl.
18 (10) Fentanyl.
19 (11) Isomethadone.
20 (12) Levoalphacetylmethadol, also known as
21 levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM. This
22 substance is authorized for the treatment of narcotic addicts under
23 federal law (see Part 291 (commencing with Section 291.501) and
24 Part 1308 (commencing with Section 1308.01) of Title 21 of the
25 Code of Federal Regulations).
26 (13) Levomethorphan.
27 (14) Levorphanol.
28 (15) Lisdexamfetamine.
29 (16) Metazocine.
30 (17) Methadone.
31 (18) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,
32 4-diphenyl butane.
33 (19) Moramide-Intermediate, 2-methyl-3-morpholino-1,
34 1-diphenylpropane-carboxylic acid.
35 (20) Oripavine.
36 (21) Pethidine (meperidine).
37 (2 2) P e t h i d i n e - I n t e r m e d i a t e - A ,
38 4-cyano-1-methyl-4-phenylpiperidine.
39 (2 3) P e t h i d i n e - I n t e r m e d i a t e - B ,
40 ethyl-4-phenylpiperidine-4-carboxylate.

- 1 (2 4) P e t h i d i n e - I n t e r m e d i a t e - C ,
2 1-methyl-4-phenylpiperidine-4-carboxylic acid.
3 (25) Phenazocine.
4 (26) Piminodine.
5 (27) Racemethorphan.
6 (28) Racemorphan.
7 (29) Remifentanyl.
8 (30) Sufentanyl.
9 (31) Tapentadol.
10 (d) Stimulants. Unless specifically excepted or unless listed in
11 another schedule, any material, compound, mixture, or preparation
12 which contains any quantity of the following substances having a
13 stimulant effect on the central nervous system:
14 (1) Amphetamine, its salts, optical isomers, and salts of its
15 optical isomers.
16 (2) Methamphetamine, its salts, isomers, and salts of its isomers.
17 (3) Dimethylamphetamine (N,N-dimethylamphetamine), its
18 salts, isomers, and salts of its isomers.
19 (4) N-Ethylmethamphetamine (N-ethyl, N-methylamphetamine),
20 its salts, isomers, and salts of its isomers.
21 (5) Phenmetrazine and its salts.
22 (6) Methylphenidate.
23 (7) Khat, which includes all parts of the plant classified
24 botanically as *Catha Edulis*, whether growing or not, the seeds
25 thereof, any extract from any part of the plant, and every
26 compound, manufacture, salt, derivative, mixture, or preparation
27 of the plant, its seeds, or extracts.
28 (8) Cathinone (also known as alpha-aminopropiophenone,
29 2-aminopropiophenone, and norephedrone).
30 (e) Depressants. Unless specifically excepted or unless listed
31 in another schedule, any material, compound, mixture, or
32 preparation which contains any quantity of the following substances
33 having a depressant effect on the central nervous system, including
34 its salts, isomers, and salts of isomers whenever the existence of
35 those salts, isomers, and salts of isomers is possible within the
36 specific chemical designation:
37 (1) Amobarbital.
38 (2) Pentobarbital.
39 (3) Phencyclidines, including the following:
40 (A) 1-(1-phenylcyclohexyl) piperidine (PCP).

1 (B) 1-(1-phenylcyclohexyl) morpholine (PCM).

2 (C) Any analog of phencyclidine which is added by the Attorney
3 General by regulation pursuant to this paragraph.

4 The Attorney General, or his or her designee, may, by rule or
5 regulation, add additional analogs of phencyclidine to those
6 enumerated in this paragraph after notice, posting, and hearing
7 pursuant to Chapter 3.5 (commencing with Section 11340) of Part
8 1 of Division 3 of Title 2 of the Government Code. The Attorney
9 General shall, in the calendar year of the regular session of the
10 Legislature in which the rule or regulation is adopted, submit a
11 draft of a proposed bill to each house of the Legislature which
12 would incorporate the analogs into this code. No rule or regulation
13 shall remain in effect beyond January 1 after the calendar year of
14 the regular session in which the draft of the proposed bill is
15 submitted to each house. However, if the draft of the proposed bill
16 is submitted during a recess of the Legislature exceeding 45
17 calendar days, the rule or regulation shall be effective until January
18 1 after the next calendar year.

19 (4) Secobarbital.

20 (5) Glutethimide.

21 (f) Immediate precursors. Unless specifically excepted or unless
22 listed in another schedule, any material, compound, mixture, or
23 preparation which contains any quantity of the following
24 substances:

25 (1) Immediate precursor to amphetamine and methamphetamine:

26 (A) Phenylacetone. Some trade or other names: phenyl-2
27 propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

28 (2) Immediate precursors to phencyclidine (PCP):

29 (A) 1-phenylcyclohexylamine.

30 (B) 1-piperidinocyclohexane carbonitrile (PCC).

31 SEC. 4. Section 11056 of the Health and Safety Code is
32 amended to read:

33 11056. (a) The controlled substances listed in this section are
34 included in Schedule III.

35 (b) Stimulants. Unless specifically excepted or unless listed in
36 another schedule, any material, compound, mixture, or preparation
37 which contains any quantity of the following substances having a
38 stimulant effect on the central nervous system, including its salts,
39 isomers (whether optical, position, or geometric), and salts of those

1 isomers whenever the existence of those salts, isomers, and salts
2 of isomers is possible within the specific chemical designation:

3 (1) Those compounds, mixtures, or preparations in dosage unit
4 form containing any stimulant substances listed in Schedule II
5 which compounds, mixtures, or preparations were listed on August
6 25, 1971, as excepted compounds under Section 1308.32 of Title
7 21 of the Code of Federal Regulations, and any other drug of the
8 quantitative composition shown in that list for those drugs or which
9 is the same except that it contains a lesser quantity of controlled
10 substances.

11 (2) Benzphetamine.

12 (3) Chlorphentermine.

13 (4) Clortermine.

14 (5) Mazindol.

15 (6) Phendimetrazine.

16 (c) Depressants. Unless specifically excepted or unless listed
17 in another schedule, any material, compound, mixture, or
18 preparation which contains any quantity of the following substances
19 having a depressant effect on the central nervous system:

20 (1) Any compound, mixture, or preparation containing any of
21 the following:

22 (A) Amobarbital

23 (B) Aprobarbital

24 (C) Butalbital

25 (D) Embutramide

26 (E) Nalorphine

27 (F) Pentobarbital

28 (G) Secobarbital

29 (H) Talbutal

30 (I) Thiamylal

31 (J) Thiopental

32 (K) Tiletamine & Zolazepam

33 (L) Vinbarbital

34 or any salt thereof and one or more other active medicinal
35 ingredients which are not listed in any schedule.

36 (2) Any suppository dosage form containing any of the
37 following:

38 (A) Amobarbital

39 (B) Aprobarbital

40 (C) Butalbital

- 1 (D) Embutramide
- 2 (E) Nalorphine
- 3 (F) Pentobarbital
- 4 (G) Secobarbital
- 5 (H) Talbutal
- 6 (I) Thiamyla
- 7 (J) Thiopental
- 8 (K) Tiletamine & Zolazepam
- 9 (L) Vinbarbital
- 10 or any salt of any of these drugs and approved by the federal Food
- 11 and Drug Administration for marketing only as a suppository.
- 12 (3) Any substance which contains any quantity of a derivative
- 13 of barbituric acid or any salt thereof.
- 14 (4) Chlorhexadol.
- 15 (5) Lysergic acid.
- 16 (6) Lysergic acid amide.
- 17 (7) Methypylon.
- 18 (8) Sulfondiethylmethane.
- 19 (9) Sulfonethylmethane.
- 20 (10) Sulfonmethane.
- 21 (11) Gamma hydroxybutyric acid, and its salts, isomers and
- 22 salts of isomers, contained in a drug product for which an
- 23 application has been approved under Section 505 of the Federal
- 24 Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).
- 25 (d) Nalorphine.
- 26 (e) Narcotic drugs. Unless specifically excepted or unless listed
- 27 in another schedule, any material, compound, mixture, or
- 28 preparation containing any of the following narcotic drugs, or their
- 29 salts calculated as the free anhydrous base or alkaloid, in limited
- 30 quantities as set forth below:
- 31 (1) Not more than 1.8 grams of codeine per 100 milliliters or
- 32 not more than 90 milligrams per dosage unit, with an equal or
- 33 greater quantity of an isoquinoline alkaloid of opium.
- 34 (2) Not more than 1.8 grams of codeine per 100 milliliters or
- 35 not more than 90 milligrams per dosage unit, with one or more
- 36 active, nonnarcotic ingredients in recognized therapeutic amounts.
- 37 (3) Not more than 300 milligrams of dihydrocodeinone per 100
- 38 milliliters or not more than 15 milligrams per dosage unit, with a
- 39 fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the above specified amounts may not contain as its nonnarcotic ingredients two or more antihistamines in combination with each other.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and chorionic gonadotropin. Any material, compound, mixture, or preparation containing chorionic gonadotropin or an anabolic steroid (excluding anabolic steroid products listed in the “Table of Exempt Anabolic Steroid Products” (Section 1308.34 of Title 21 of the Code of Federal Regulations), as exempt from the federal Controlled Substances Act (Section 801 and following of Title 21 of the United States Code)), including, but not limited to, the following:

- (1) Androisoxazole.
- (2) Androstenediol.
- (3) Bolandiol.
- (4) Bolasterone.
- (5) Boldenone.
- (6) Calusterone.
- (7) Chlormethandienone.
- (8) Clostebol.
- (9) Dehydrochlormethyltestosterone.
- (10) Delta1-dihydrotestosterone.

- 1 (11) Desoxymethyltestosterone.
- 2 (12) Dihydromesterone.
- 3 (13) Drostanolone.
- 4 (14) Ethylestrenol.
- 5 (15) Fluoxymesterone.
- 6 (16) Formyldienolone.
- 7 (17) Furazabol.
- 8 (18) 4-Hydroxy-19-nortestosterone.
- 9 (19) Mesterolone.
- 10 (20) Methandriol.
- 11 (21) Methandrostenolone.
- 12 (22) Methenolone.
- 13 (23) 17-Methyltestosterone.
- 14 (24) Methyltrienolone.
- 15 (25) Mibolerone.
- 16 (26) Nandrolone.
- 17 (27) Norbolethone.
- 18 (28) Norclostebol.
- 19 (29) Norethandrolone.
- 20 (30) Normethandrolone.
- 21 (31) Oxandrolone.
- 22 (32) Oxymestron.
- 23 (33) Oxymetholone.
- 24 (34) Quinbolone.
- 25 (35) Stanolone.
- 26 (36) Stanozolol.
- 27 (37) Stenbolone.
- 28 (38) Testolactone.
- 29 (39) Testosterone.
- 30 (40) Tetrahydrogestrinone.
- 31 (41) Trenbolone.
- 32 (42) Chorionic Gonadotropin (HGC).
- 33 (43) 13Beta-ethyl-17beta-hydroxygon-4-en-3-one
- 34 (44) 17Alpha-methyl-3alpha,17beta-dihydroxy-5alpha-androstane
- 35 (45) 17Alpha-methyl-3beta,17beta-dihydroxy-5alpha-androstane
- 36 (46) 17Alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene
- 37 (47) 17Alpha-methyl-4-hydroxynandrolone
- 38 (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one)
- 39 (48) 17Alpha-methyl-delta1-dihydrotestosterone
- 40 (17betahydroxy-17alpha-methyl-5alpha-androst-1-en-3-one)

1 (49) 17Alpha-methyl-1-testosterone
 2 (50) 19-Nor-4,9(10)-androstedione
 3 (5 1) 1 9 - N o r - 4 - a n d r o s t e n e d i o l
 4 (3 b e t a , 1 7 b e t a - d i h y d r o x y e s t r - 4 - e n e ;
 5 3alpha,17beta-dihydroxyestr-4-ene)
 6 (52) 19-Nor-4-androstenedione (estr-4-en-3,17-dione)
 7 (5 3) 1 9 - N o r - 5 - a n d r o s t e n e d i o l
 8 (3 b e t a , 1 7 b e t a - d i h y d r o x y e s t r - 5 - e n e ;
 9 3alpha,17beta-dihydroxyestr-5-ene)
 10 (54) 19-Nor-5-androstenedione (estr-5-en-3,17-dione)
 11 (5 5) 1 - A n d r o s t e n e d i o l
 12 (3 b e t a , 1 7 b e t a - d i h y d r o x y - 5 a l p h a a n d r o s t - 1 - e n e ;
 13 3alpha,17beta-dihydroxy-5alphaandrost-1-ene)
 14 (56) 1-Androstenedione (5alpha-androst-1-en-3,17-dione)
 15 (57) 3Alpha,17beta-dihydroxy-5alpha-androstane
 16 (58) 3Beta,17beta-dihydroxy-5alpha-androstane
 17 (59) 4-Androstenediol (3beta,17beta-dihydroxy-androst-4-ene)
 18 (60) 4-Androstenedione (androst-4-en-3,17-dione)
 19 (61) 4-Dihydrotestosterone (17beta-hydroxyandrost-3-one)
 20 (6 2) 4 - H y d r o x y - 1 9 - n o r t e s t o s t e r o n e
 21 (4,17beta-dihydroxyestr-4-en-3-one)
 22 (6 3) 4 - H y d r o x y t e s t o s t e r o n e
 23 (4,17beta-dihydroxyandrost-4-en-3-one)
 24 (64) 5-Androstenediol (3beta,17beta-dihydroxy-androst-5-ene)
 25 (65) 5-Androstenedione (androst-5-en-3,17-dione)
 26 (g) Buprenorphine. Any material, compound, mixture, or
 27 preparation containing Buprenorphine.
 28 (h) Butabarbital. Any material, compound, mixture, or
 29 preparation containing Butabarbital.
 30 (i) Ketamine. Any material, compound, mixture, or preparation
 31 containing ketamine.
 32 (j) Hallucinogenic substances. Any of the following
 33 hallucinogenic substances: dronabinol (synthetic) in sesame oil
 34 and encapsulated in a soft gelatin capsule in a drug product
 35 approved by the federal Food and Drug Administration.
 36 SEC. 5. Section 11057 of the Health and Safety Code is
 37 amended to read:
 38 11057. (a) The controlled substances listed in this section are
 39 included in Schedule IV.

(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(3) Butorphanol.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam.

(2) Barbitol.

(3) Bromazepam.

(4) Camazepam.

(5) Chloral betaine.

(6) Chloral hydrate.

(7) Chlordiazepoxide.

(8) Clobazam.

(9) Clonazepam.

(10) Clorazepate.

(11) Clotiazepam.

(12) Cloxazolam.

(13) Delorazepam.

(14) Dexfenfluramine.

(15) Diazepam.

(16) Dichloralphenazone.

(17) Diethylpropion.

(18) Difenoxin.

(19) Estazolam.

(20) Ethchlorvynol.

(21) Ethinamate.

- 1 (22) Ethyl loflazepate.
- 2 (23) Fludiazepam.
- 3 (24) Flunitrazepam.
- 4 (25) Flurazepam.
- 5 (26) Fospropofol.
- 6 (27) Halazepam.
- 7 (28) Haloxazolam.
- 8 (29) Ketazolam.
- 9 (30) Loprazolam.
- 10 (31) Lorazepam.
- 11 (32) Lormetazepam.
- 12 (33) Mebutamate.
- 13 (34) Medazepam.
- 14 (35) Meprobamate.
- 15 (36) Methohexital.
- 16 (37) Methylphenobarbital (Mephobarbital).
- 17 (38) Midazolam.
- 18 (39) Nimetazepam.
- 19 (40) Nitrazepam.
- 20 (41) Nordiazepam.
- 21 (42) Oxazepam.
- 22 (43) Oxazolam.
- 23 (44) Paraldehyde.
- 24 (45) Pentazocine.
- 25 (46) Petrichoral.
- 26 (47) Phenobarbital.
- 27 (48) Pinazepam.
- 28 (49) Prazepam.
- 29 (50) Quazepam.
- 30 (51) Temazepam.
- 31 (52) Tetrazepam.
- 32 (53) Triazolam.
- 33 (54) Zaleplon.
- 34 (55) Zolpidem.
- 35 (56) Zopiclone.
- 36 (e) Fenfluramine. Any material, compound, mixture, or
- 37 preparation which contains any quantity of the following
- 38 substances, including its salts, isomers (whether optical, position,
- 39 or geometric), and salts of those isomers, whenever the existence
- 40 of those salts, isomers, and salts of isomers is possible:

1 (1) Fenfluramine.

2 (f) Stimulants. Unless specifically excepted or unless listed in
3 another schedule, any material, compound, mixture, or preparation
4 which contains any quantity of the following substances having a
5 stimulant effect on the central nervous system, including its salts,
6 isomers (whether optical, position, or geometric), and salts of those
7 isomers is possible within the specific chemical designation:

8 (1) Diethylpropion.

9 (2) Fencamfamin.

10 (3) Fenproporex.

11 (4) Mazindol.

12 (5) Mefenorex.

13 (6) Modafinil.

14 (7) Phentermine.

15 (8) Pemoline (including organometallic complexes and chelates
16 thereof).

17 (9) Pipradrol.

18 (10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

19 (11) Cathine ((+)-norpseudoephedrine).

20 (12) Subutramine.

21 (g) Other substances. Unless specifically excepted or unless
22 listed in another schedule, any material, compound, mixture, or
23 preparation which contains any quantity of pentazocine, including
24 its salts.

25 SEC. 6. Section 11161.5 of the Health and Safety Code is
26 amended to read:

27 11161.5. (a) Prescription forms for controlled substance
28 prescriptions shall be obtained from security printers approved by
29 the Department of Justice.

30 (b) The department may approve security printer applications
31 after the applicant has provided the following information:

32 (1) Name, address, and telephone number of the applicant.

33 (2) Policies and procedures of the applicant for verifying the
34 identity of the prescriber ordering controlled substance prescription
35 forms.

36 (3) Policies and procedures of the applicant for verifying
37 delivery of controlled substance prescription forms to prescribers.

38 (4) (A) The location, names, and titles of the applicant's agent
39 for service of process in this state; all principal corporate officers,
40 if any; all managing general partners, if any; and any individual

1 owner, partner, corporate officer, manager, agent, representative,
2 employee, or subcontractor of the applicant who has direct access
3 to, or management or control of, controlled substance prescription
4 forms.

5 (B) A report containing this information shall be made on an
6 annual basis and within 30 days after any change of office,
7 principal corporate officers, managing general partner, or of any
8 person described in subparagraph (A).

9 (5) (A) A signed statement indicating whether the applicant,
10 any principal corporate officer, any managing general partner, or
11 any individual owner, partner, corporate officer, manager, agent,
12 representative, employee, or subcontractor of the applicant who
13 has direct access to, or management or control of, controlled
14 substance prescription forms, has ever been convicted of, or pled
15 no contest to, a violation of any law of a foreign country, the United
16 States, or any state, or of any local ordinance.

17 (B) The department shall provide the applicant and any
18 individual owner, partner, corporate officer, manager, agent,
19 representative, employee, or subcontractor of the applicant who
20 has direct access to, or management or control of, controlled
21 substance prescription forms, with the means and direction to
22 provide fingerprints and related information, in a manner specified
23 by the department, for the purpose of completing state, federal, or
24 foreign criminal background checks.

25 (C) Any applicant described in subdivision (b) shall submit his
26 or her fingerprint images and related information to the department,
27 for the purpose of the department obtaining information as to the
28 existence and nature of a record of state, federal, or foreign level
29 convictions and state, federal, or foreign level arrests for which
30 the department establishes that the applicant was released on bail
31 or on his or her own recognizance pending trial, as described in
32 subdivision (l) of Section 11105 of the Penal Code. Requests for
33 federal level criminal offender record information received by the
34 department pursuant to this section shall be forwarded to the
35 Federal Bureau of Investigation by the department.

36 (D) The department shall assess against each security printer
37 applicant a fee determined by the department to be sufficient to
38 cover all processing, maintenance, and investigative costs generated
39 from or associated with completing state, federal, or foreign
40 background checks and inspections of security printers pursuant

1 to this section with respect to that applicant; the fee shall be paid
2 by the applicant at the time he or she submits the security printer
3 application, fingerprints, and related information to the department.

4 (E) The department shall retain fingerprint impressions and
5 related information for subsequent arrest notification pursuant to
6 Section 11105.2 of the Penal Code for all applicants.

7 (c) The department may, within 60 calendar days of receipt of
8 the application from the applicant, deny the security printer
9 application.

10 (d) The department may deny a security printer application on
11 any of the following grounds:

12 (1) The applicant, any individual owner, partner, corporate
13 officer, manager, agent, representative, employee, or subcontractor
14 for the applicant, who has direct access, management, or control
15 of controlled substance prescription forms, has been convicted of
16 a crime. A conviction within the meaning of this paragraph means
17 a plea or verdict of guilty or a conviction following a plea of nolo
18 contendere. Any action which a board is permitted to take
19 following the establishment of a conviction may be taken when
20 the time for appeal has elapsed, the judgment of conviction has
21 been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a
23 subsequent order under the provisions of Section 1203.4 of the
24 Penal Code.

25 (2) The applicant committed any act involving dishonesty, fraud,
26 or deceit with the intent to substantially benefit himself, herself,
27 or another, or substantially injure another.

28 (3) The applicant committed any act that would constitute a
29 violation of this division.

30 (4) The applicant knowingly made a false statement of fact
31 required to be revealed in the application to produce controlled
32 substance prescription forms.

33 (5) The department determines that the applicant failed to
34 demonstrate adequate security procedures relating to the production
35 and distribution of controlled substance prescription forms.

36 (6) The department determines that the applicant has submitted
37 an incomplete application.

38 (7) As a condition for its approval as a security printer, an
39 applicant shall authorize the Department of Justice to make any
40 examination of the books and records of the applicant, or to visit

1 and inspect the applicant during business hours, to the extent
2 deemed necessary by the board or department to properly enforce
3 this section.

4 (e) An approved applicant shall submit an exemplar of a
5 controlled substance prescription form, with all security features,
6 to the Department of Justice within 30 days of initial production.

7 (f) The department shall maintain a list of approved security
8 printers and the department shall make this information available
9 to prescribers and other appropriate government agencies, including
10 the Board of Pharmacy.

11 (g) Before printing any controlled substance prescription forms,
12 a security printer shall verify with the appropriate licensing board
13 that the prescriber possesses a license and current prescribing
14 privileges which permits the prescribing of controlled substances
15 with the federal Drug Enforcement Administration (DEA).

16 (h) Controlled substance prescription forms shall be provided
17 directly to the prescriber either in person, by certified mail, or by
18 a means that requires a signature signifying receipt of the package
19 and provision of that signature to the security printer. Controlled
20 substance ~~prescriptions~~ *prescription forms* provided in person shall
21 be restricted to established customers. Security printers shall obtain
22 a photo identification from the customer and maintain a log of this
23 information. Controlled substance ~~prescriptions~~ *prescription forms*
24 shall be shipped only to the prescriber's address on file and verified
25 with the federal Drug Enforcement Administration or the Medical
26 Board of California.

27 (i) Security printers shall retain ordering and delivery records
28 in a readily retrievable manner for individual prescribers for three
29 years.

30 (j) Security printers shall produce ordering and delivery records
31 upon request by an authorized officer of the law as defined in
32 Section 4017 of the Business and Professions Code.

33 (k) Security printers shall report any theft or loss of controlled
34 substance ~~prescriptions~~ *prescription forms* to the Department of
35 Justice via fax or e-mail within 24 hours of the theft or loss.

36 (l) (1) The department shall impose restrictions, sanctions, or
37 penalties, *subject to subdivisions (m) and (n)*, against security
38 printers who are not in compliance with this division pursuant to
39 regulations implemented pursuant to this division and shall revoke
40 its approval of a security printer for a violation of this division or

1 action that would permit a denial pursuant to subdivision (d) of
2 this section.

3 (2) When the department revokes its approval, it shall notify
4 the appropriate licensing boards and remove the security printer
5 from the list of approved security printers.

6 *(m) The following violations by security printers shall be*
7 *punishable pursuant to subdivision (n):*

8 *(1) Failure to comply with the Security Printer Guidelines*
9 *established by the Security Printer Program as a condition of*
10 *approval.*

11 *(2) Failure to take reasonable precautions to prevent any*
12 *dishonest act or illegal activity related to the access and control*
13 *of security prescription forms.*

14 *(3) Theft or fraudulent use of a prescriber's identity in order to*
15 *obtain security prescription forms.*

16 *(n) A security printer approved pursuant to subdivision (b) shall*
17 *be subject to the following penalties for actions leading to the*
18 *denial of a security printer application specified in subdivision*
19 *(d) or for a violation specified in subdivision (m):*

20 *(1) For a first violation, a fine not to exceed one thousand*
21 *dollars (\$1,000).*

22 *(2) For a second or subsequent violation, a fine not to exceed*
23 *two thousand five hundred dollars (\$2,500) for each violation.*

24 *(3) For a third or subsequent violation, a filing of an*
25 *administrative disciplinary action seeking to suspend or revoke*
26 *security printer approval.*

27 SEC. 7. Section 11162.1 of the Health and Safety Code is
28 amended to read:

29 11162.1. (a) The prescription forms for controlled substances
30 shall be printed with the following features:

31 (1) A latent, repetitive "void" pattern shall be printed across the
32 entire front of the prescription blank; if a prescription is scanned
33 or photocopied, the word "void" shall appear in a pattern across
34 the entire front of the prescription.

35 (2) A watermark shall be printed on the backside of the
36 prescription blank; the watermark shall consist of the words
37 "California Security Prescription."

38 (3) A chemical void protection that prevents alteration by
39 chemical washing.

40 (4) A feature printed in thermochromic ink.

1 (5) An area of opaque writing so that the writing disappears if
2 the prescription is lightened.

3 (6) A description of the security features included on each
4 prescription form.

5 (7) (A) Six quantity check off boxes shall be printed on the
6 form so that the prescriber may indicate the quantity by checking
7 the applicable box where the following quantities shall appear:

8 1–24

9 25–49

10 50–74

11 75–100

12 101–150

13 151 and over.

14 (B) In conjunction with the quantity boxes, a space shall be
15 provided to designate the units referenced in the quantity boxes
16 when the drug is not in tablet or capsule form.

17 (8) Prescription blanks shall contain a statement printed on the
18 bottom of the prescription blank that the “Prescription is void if
19 the number of drugs prescribed is not noted.”

20 (9) The preprinted name, category of licensure, license number,
21 federal controlled substance registration number, and address of
22 the prescribing practitioner.

23 (10) Check boxes shall be printed on the form so that the
24 prescriber may indicate the number of refills ordered.

25 (11) The date of origin of the prescription.

26 (12) A check box indicating the prescriber’s order not to
27 substitute.

28 (13) An identifying number assigned to the approved security
29 printer by the Department of Justice.

30 (14) (A) A check box by the name of each prescriber when a
31 prescription form lists multiple prescribers.

32 (B) Each prescriber who signs the prescription form shall
33 identify himself or herself as the prescriber by checking the box
34 by his or her name.

35 (b) Each batch of controlled substance prescription forms shall
36 have the lot number printed on the form and each form within that
37 batch shall be numbered sequentially beginning with the numeral
38 one.

39 (c) (1) A prescriber designated by a licensed health care facility,
40 a clinic specified in Section 1200, or a clinic specified in

1 subdivision (a) of Section 1206 that has 25 or more physicians or
2 surgeons may order controlled substance prescription forms for
3 use by prescribers when treating patients in that facility without
4 the information required in paragraph (9) of subdivision (a) or
5 paragraph (3) of this subdivision.

6 (2) Forms ordered pursuant to this subdivision shall have the
7 name, category of licensure, license number, and federal controlled
8 substance registration number of the designated prescriber and the
9 name, address, category of licensure, and license number of the
10 licensed health care facility the clinic specified in Section 1200,
11 or the clinic specified in Section 1206 that has 25 or more
12 physicians or surgeons preprinted on the form. Licensed health
13 care facilities or clinics exempt under Section 1206 are not required
14 to preprint the category of licensure and license number of their
15 facility or clinic.

16 (3) Forms ordered pursuant to this section shall not be valid
17 prescriptions without the name, category of licensure, license
18 number, and federal controlled substance registration number of
19 the prescriber on the form.

20 (4) (A) Except as provided in subparagraph (B), the designated
21 prescriber shall maintain a record of the prescribers to whom the
22 controlled substance prescription forms are issued, that shall
23 include the name, category of licensure, license number, federal
24 controlled substance registration number, and quantity of controlled
25 substance prescription forms issued to each prescriber. The record
26 shall be maintained in the health facility for three years.

27 (B) Forms ordered pursuant to this subdivision that are printed
28 by a computerized prescription generation system shall not be
29 subject to subparagraph (A) or paragraph (7) of subdivision (a).
30 Forms printed pursuant to this subdivision that are printed by a
31 computerized prescription generation system may contain the
32 prescriber's name, category of professional licensure, license
33 number, federal controlled substance registration number, and the
34 date of the prescription.

35 (d) This section shall become operative on January 1, 2012.
36 Prescription forms not in compliance with this division shall not
37 be valid or accepted after July 1, 2012.

38 SEC. 8. Section 11165 of the Health and Safety Code is
39 amended to read:

1 11165. (a) To assist law enforcement and regulatory agencies
2 in their efforts to control the diversion and resultant abuse of
3 Schedule II, Schedule III, and Schedule IV controlled substances,
4 and for statistical analysis, education, and research, the Department
5 of Justice shall, contingent upon the availability of adequate funds
6 from the Contingent Fund of the Medical Board of California, the
7 Pharmacy Board Contingent Fund, the State Dentistry Fund, the
8 Board of Registered Nursing Fund, and the Osteopathic Medical
9 Board of California Contingent Fund, maintain the Controlled
10 Substance Utilization Review and Evaluation System (CURES)
11 for the electronic monitoring of, and Internet access to information
12 regarding, the prescribing and dispensing of Schedule II, Schedule
13 III, and Schedule IV controlled substances by all practitioners
14 authorized to prescribe or dispense these controlled substances.

15 (b) The reporting of Schedule III and Schedule IV controlled
16 substance prescriptions to CURES shall be contingent upon the
17 availability of adequate funds from the Department of Justice. The
18 department may seek and use grant funds to pay the costs incurred
19 from the reporting of controlled substance prescriptions to CURES.
20 Funds shall not be appropriated from the Contingent Fund of the
21 Medical Board of California, the Pharmacy Board Contingent
22 Fund, the State Dentistry Fund, the Board of Registered Nursing
23 Fund, the Naturopathic Doctor's Fund, or the Osteopathic Medical
24 Board of California Contingent Fund to pay the costs of reporting
25 Schedule III and Schedule IV controlled substance prescriptions
26 to CURES.

27 (c) CURES shall operate under existing provisions of law to
28 safeguard the privacy and confidentiality of patients. Data obtained
29 from CURES shall only be provided to appropriate state, local,
30 and federal persons or public agencies for disciplinary, civil, or
31 criminal purposes and to other agencies or entities, as determined
32 by the Department of Justice, for the purpose of educating
33 practitioners and others in lieu of disciplinary, civil, or criminal
34 actions. Data may be provided to public or private entities, as
35 approved by the Department of Justice, for educational, peer
36 review, statistical, or research purposes, provided that patient
37 information, including any information that may identify the
38 patient, is not compromised. Further, data disclosed to any
39 individual or agency as described in this subdivision shall not be
40 disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, the dispensing pharmacy or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

(1) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(e) This section shall become operative on January 1, 2005.

SEC. 9. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) A licensed health care practitioner eligible to prescribe Schedule II, Schedule III, or Schedule IV controlled substances or a pharmacist may provide a notarized application developed by the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient maintained within the Department of Justice, and the department may release to that practitioner or pharmacist, the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

1 (A) An application may be denied, or a subscriber may be
2 suspended, for reasons which include, but are not limited to, the
3 following:

4 (i) Materially falsifying an application for a subscriber.

5 (ii) Failure to maintain effective controls for access to the patient
6 activity report.

7 (iii) Suspended or revoked federal Drug Enforcement
8 Administration (DEA) registration.

9 (iv) Any subscriber who is arrested for a violation of law
10 governing controlled substances or any other law for which the
11 possession or use of a controlled substance is an element of the
12 crime.

13 (v) Any subscriber accessing information for any other reason
14 than caring for his or her patients.

15 (B) Any authorized subscriber shall notify the Department of
16 Justice within 10 days of any changes to the subscriber account.

17 (2) To allow sufficient time for licensed health care practitioners
18 eligible to prescribe Schedule II, Schedule III, or Schedule IV
19 controlled substances and a pharmacist to apply and receive access
20 to PDMP, a written request may be made, until July 1, 2012, and
21 the Department of Justice may release to that practitioner or
22 pharmacist the history of controlled substances dispensed to an
23 individual under his or her care based on data contained in CURES.

24 (b) Any request for, or release of, a controlled substance history
25 pursuant to this section shall be made in accordance with guidelines
26 developed by the Department of Justice.

27 (c) In order to prevent the inappropriate, improper, or illegal
28 use of Schedule II, Schedule III, or Schedule IV controlled
29 substances, the Department of Justice may initiate the referral of
30 the history of controlled substances dispensed to an individual
31 based on data contained in CURES to licensed health care
32 practitioners, pharmacists, or both, providing care or services to
33 the individual.

34 (d) The history of controlled substances dispensed to an
35 individual based on data contained in CURES that is received by
36 a practitioner or pharmacist from the Department of Justice
37 pursuant to this section shall be considered medical information
38 subject to the provisions of the Confidentiality of Medical
39 Information Act contained in Part 2.6 (commencing with Section
40 56) of Division 1 of the Civil Code.

1 SEC. 10. Section 11165.2 is added to the Health and Safety
2 Code, to read:

3 11165.2. (a) The Department of Justice may conduct audits
4 of the *CURES* Prescription Drug Monitoring Program system and
5 its users.

6 (b) The Department of Justice may establish, by regulation, a
7 system for the issuance to a *CURES* Prescription Drug Monitoring
8 Program subscriber of a citation which may contain an order of
9 abatement, or an order to pay an administrative fine assessed by
10 the Department of Justice if the subscriber is in violation of any
11 provision of this chapter or any regulation adopted by the
12 Department of Justice pursuant to this chapter.

13 (c) The system shall contain the following provisions:

14 (1) Citations shall be in writing and shall describe with
15 particularity the nature of the violation, including specific reference
16 to the provision of law or regulation of the department determined
17 to have been violated.

18 (2) Whenever appropriate, the citation shall contain an order of
19 abatement establishing a reasonable time for abatement of the
20 violation.

21 (3) In no event shall the administrative fine assessed by the
22 department exceed two thousand five hundred dollars (\$2,500) for
23 each violation. In assessing a fine, due consideration shall be given
24 to the appropriateness of the amount of the fine with respect to
25 such factors as the gravity of the violation, the good faith of the
26 subscribers, and the history of previous violations.

27 (4) An order of abatement or a fine assessment issued pursuant
28 to a citation shall inform the subscriber that if the subscriber desires
29 a hearing to contest the finding of a violation, a hearing shall be
30 requested by written notice to the *CURES Prescription Drug*
31 *Monitoring* Program within 30 days of the date of issuance of the
32 citation or assessment. Hearings shall be held pursuant to Chapter
33 5 (commencing with Section 11500) of Part 1 of Division 3 of
34 Title 2 of the Government Code.

35 (5) In addition to requesting a hearing, the subscriber may,
36 within 10 days after service of the citation, request in writing an
37 opportunity for an informal conference with the department
38 regarding the citation. At the conclusion of the informal conference,
39 the department may affirm, modify, or dismiss the citation,
40 including any fine levied or order of abatement issued. The decision

1 shall be deemed to be a final order with regard to the citation
2 issued, including the fine levied or the order of abatement which
3 could include permanent suspension to the system, a monetary
4 fine, or both, depending on the gravity of the violation ~~which will~~
5 ~~be stipulated by regulation~~. However, the subscriber does not waive
6 its right to request a hearing to contest a citation by requesting an
7 informal conference. *If the citation is affirmed, a formal hearing*
8 *may be requested within 30 days of the date the citation was*
9 *affirmed*. If the citation is dismissed after the informal conference,
10 the request for a hearing on the matter of the citation shall be
11 deemed to be withdrawn. If the citation, including any fine levied
12 or order of abatement, is modified, the citation originally issued
13 shall be considered withdrawn and a new citation issued. If a
14 hearing is requested for a subsequent citation, it shall be requested
15 within 30 days of service of that subsequent citation.

16 (6) Failure of a subscriber to pay a fine within 30 days of the
17 date of assessment or comply with an order of abatement within
18 the fixed time, unless the citation is being appealed, may result in
19 disciplinary action taken by the department. If a citation is not
20 contested and a fine is not paid, the subscriber account will be
21 terminated:

22 (A) A citation may be issued without the assessment of an
23 administrative fine.

24 (B) Assessment of administrative fines may be limited to only
25 particular violations of law or department regulations.

26 (d) Notwithstanding any other provision of law, if a fine is paid
27 to satisfy an assessment based on the finding of a violation,
28 payment of the fine shall be represented as a satisfactory resolution
29 of the matter for purposes of public disclosure.

30 (e) Administrative fines collected pursuant to this section shall
31 be deposited in the CURES Program Special Fund. These special
32 funds shall provide support for costs associated with informal and
33 formal hearings, maintenance, and updates to the CURES ~~system~~
34 *Prescription Drug Monitoring Program*.

35 (f) The sanctions authorized under this section shall be separate
36 from, and in addition to, any other administrative, civil, or criminal
37 remedies; however, a criminal action may not be initiated for a
38 specific offense if a citation has been issued pursuant to this section
39 for that offense, and a citation may not be issued pursuant to this

1 section for a specific offense if a criminal action for that offense
2 has been filed.

3 *(g) Nothing in this section shall be deemed to prevent the*
4 *department from serving and prosecuting an accusation to suspend*
5 *or revoke a subscriber if grounds for that suspension or revocation*
6 *exist.*

7 SEC. 11. Section 11165.3 is added to the Health and Safety
8 Code, to read:

9 11165.3. The theft or loss of prescription ~~information or forms~~
10 shall be reported immediately to the CURES *Prescription Drug*
11 *Monitoring* Program, but no later than three days after the
12 discovery of the theft or loss. This notification may be done in
13 writing utilizing the Bureau of Narcotic Enforcement 1175
14 Reporting Theft/Loss Form or may be reported by the authorized
15 subscriber through the CURES Prescription Drug Monitoring
16 Program.

17 SEC. 12. Section 11212 of the Health and Safety Code is
18 amended to read:

19 11212. (a) Persons who, under applicable federal laws or
20 regulations, are lawfully entitled to use controlled substances for
21 the purpose of research, instruction, or analysis, may lawfully
22 obtain and use for such purposes those substances classified in
23 paragraphs (81) and (82) of subdivision (b) of Section 11054 of
24 the Health and Safety Code, upon registration with and approval
25 by the Department of Justice for use of those substances in bona
26 fide research, instruction, or analysis.

27 (b) That research, instruction, or analysis shall be carried on
28 only under the auspices of the individual identified by the registrant
29 as responsible for the research. Complete records of receipts, stocks
30 at hand, and use of these controlled substances shall be kept.

31 (c) The Department of Justice may withdraw approval of the
32 use of such substances at any time. The department may obtain
33 and inspect at any time the records required to be maintained by
34 this section.

35 SEC. 13. Section 11350 of the Health and Safety Code is
36 amended to read:

37 11350. (a) Except as otherwise provided in this division, every
38 person who possesses (1) any controlled substance specified in
39 subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section
40 11054, specified in paragraph (14), (15), or (20) of subdivision (d)

1 of Section 11054, or specified in subdivision (b) or (c) of Section
2 11055, or specified in subdivision (j) of Section 11056, or (2) any
3 controlled substance classified in Schedule III, IV, or V which is
4 a narcotic drug, unless upon the written prescription of a physician,
5 dentist, podiatrist, or veterinarian licensed to practice in this state,
6 shall be punished by imprisonment in the state prison.

7 (b) Except as otherwise provided in this division, every person
8 who possesses any controlled substance specified in subdivision
9 (e) of Section 11054 shall be punished by imprisonment in ~~the a~~
10 county jail for not more than one year or in the state prison.

11 (c) Except as otherwise provided in this division, whenever a
12 person who possesses any of the controlled substances specified
13 in subdivision (a) or (b), the judge may, in addition to any
14 punishment provided for pursuant to subdivision (a) or (b), assess
15 against that person a fine not to exceed seventy dollars (\$70) with
16 proceeds of this fine to be used in accordance with Section 1463.23
17 of the Penal Code. The court shall, however, take into consideration
18 the defendant's ability to pay, and no defendant shall be denied
19 probation because of his or her inability to pay the fine permitted
20 under this subdivision.

21 (d) Except in unusual cases in which it would not serve the
22 interest of justice to do so, whenever a court grants probation
23 pursuant to a felony conviction under this section, in addition to
24 any other conditions of probation which may be imposed, the
25 following conditions of probation shall be ordered:

26 (1) For a first offense under this section, a fine of at least one
27 thousand dollars (\$1,000) or community service.

28 (2) For a second or subsequent offense under this section, a fine
29 of at least two thousand dollars (\$2,000) or community service.

30 (3) If a defendant does not have the ability to pay the minimum
31 fines specified in paragraphs (1) and (2), community service shall
32 be ordered in lieu of the fine.

33 SEC. 14. Section 11351 of the Health and Safety Code is
34 amended to read:

35 11351. Except as otherwise provided in this division, every
36 person who possesses for sale or purchases for purposes of sale
37 (1) any controlled substance specified in subdivision (b), (c), or
38 (e) of Section 11054, specified in paragraph (14), (15), or (20) of
39 subdivision (d) of Section 11054, or specified in subdivision (b)
40 or (c) of Section 11055, or specified in subdivision (j) of Section

1 11056, or (2) any controlled substance classified in Schedule III,
2 IV, or V which is a narcotic drug, shall be punished by
3 imprisonment in the state prison for two, three, or four years.

4 SEC. 15. Section 11352 of the Health and Safety Code is
5 amended to read:

6 11352. (a) Except as otherwise provided in this division, every
7 person who transports, imports into this state, sells, furnishes,
8 administers, or gives away, or offers to transport, import into this
9 state, sell, furnish, administer, or give away, or attempts to import
10 into this state or transport (1) any controlled substance specified
11 in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f)
12 of Section 11054, specified in paragraph (14), (15), or (20) of
13 subdivision (d) of Section 11054, or specified in subdivision (b)
14 or (c) of Section 11055, or specified in subdivision (j) of Section
15 11056, or (2) any controlled substance classified in Schedule III,
16 IV, or V which is a narcotic drug, unless upon the written
17 prescription of a physician, dentist, podiatrist, or veterinarian
18 licensed to practice in this state, shall be punished by imprisonment
19 in the state prison for three, four, or five years.

20 (b) Notwithstanding the penalty provisions of subdivision (a),
21 any person who transports for sale any controlled substances
22 specified in subdivision (a) within this state from one county to
23 another noncontiguous county shall be punished by imprisonment
24 in the state prison for three, six, or nine years.

25 SEC. 16. Section 11353 of the Health and Safety Code is
26 amended to read:

27 11353. Every person 18 years of age or over, (a) who in any
28 voluntary manner solicits, induces, encourages, or intimidates any
29 minor with the intent that the minor shall violate any provision of
30 this chapter or Section 11550 with respect to either (1) a controlled
31 substance which is specified in subdivision (b), (c), or (e), or
32 paragraph (1) of subdivision (f) of Section 11054, specified in
33 paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
34 or specified in subdivision (b) or (c) of Section 11055, or specified
35 in subdivision (j) of Section 11056, or (2) any controlled substance
36 classified in Schedule III, IV, or V which is a narcotic drug, (b)
37 who hires, employs, or uses a minor to unlawfully transport, carry,
38 sell, give away, prepare for sale, or peddle any such controlled
39 substance, or (c) who unlawfully sells, furnishes, administers,
40 gives, or offers to sell, furnish, administer, or give, any such

1 controlled substance to a minor, shall be punished by imprisonment
2 in the state prison for a period of three, six, or nine years.

3 SEC. 17. Section 11354 of the Health and Safety Code is
4 amended to read:

5 11354. (a) Every person under ~~the age of 18 years~~ *18 years*
6 *of age* who in any voluntary manner solicits, induces, encourages,
7 or intimidates any minor with the intent that the minor shall violate
8 any provision of this chapter or Section 11550, who hires, employs,
9 or uses a minor to unlawfully transport, carry, sell, give away,
10 prepare for sale, or peddle (1) any controlled substance specified
11 in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f)
12 of Section 11054, specified in paragraph (14), (15), or (20) of
13 subdivision (d) of Section 11054, or specified in subdivision (b)
14 or (c) of Section 11055, or specified in subdivision (j) of Section
15 11056, or (2) any controlled substance classified in Schedule III,
16 IV, or V which is a narcotic drug, or who unlawfully sells,
17 furnishes, administers, gives, or offers to sell, furnish, administer,
18 or give, any such controlled substance to a minor shall be punished
19 by imprisonment in the state prison.

20 (b) This section is not intended to affect the jurisdiction of the
21 juvenile court.

22 SEC. 18. Section 11355 of the Health and Safety Code is
23 amended to read:

24 11355. Every person who agrees, consents, or in any manner
25 offers to unlawfully sell, furnish, transport, administer, or give (1)
26 any controlled substance specified in subdivision (b), (c), or (e),
27 or paragraph (1) of subdivision (f) of Section 11054, specified in
28 paragraph (13), (14), (15), or (20) of subdivision (d) of Section
29 11054, or specified in subdivision (b) or (c) of Section 11055, or
30 specified in subdivision (j) of Section 11056, or (2) any controlled
31 substance classified in Schedule III, IV, or V which is a narcotic
32 drug to any person, or who offers, arranges, or negotiates to have
33 any such controlled substance unlawfully sold, delivered,
34 transported, furnished, administered, or given to any person and
35 who then sells, delivers, furnishes, transports, administers, or gives,
36 or offers, arranges, or negotiates to have sold, delivered,
37 transported, furnished, administered, or given to any person any
38 other liquid, substance, or material in lieu of any such controlled
39 substance shall be punished by imprisonment ~~in the a county jail~~
40 for not more than one year, or in the state prison.

SEC. 19. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (i) of Section 11056 is guilty of a misdemeanor.

(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.

(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (11) of subdivision (f) of Section 11057 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

1 SEC. 20. Section 11378 of the Health and Safety Code is
2 amended to read:

3 11378. Except as otherwise provided in Article 7 (commencing
4 with Section 4211) of Chapter 9 of Division 2 of the Business and
5 Professions Code, every person who possesses for sale any
6 controlled substance which is (1) classified in Schedule III, IV, or
7 V and which is not a narcotic drug, except subdivision (i) of
8 Section 11056, (2) specified in subdivision (d) of Section 11054,
9 except paragraphs (13), (14), (15), (20), (21), (22), and (23) of
10 subdivision (d), (3) specified in paragraph (11) of subdivision (c)
11 of Section 11056, (4) specified in paragraph (2) or (3) of
12 subdivision (f) of Section 11054, or (5) specified in subdivision
13 (d), (e), or (f), except paragraph (3) of subdivision (e) and
14 subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of
15 Section 11055, shall be punished by imprisonment in the state
16 prison.

17 SEC. 21. Section 11379 of the Health and Safety Code is
18 amended to read:

19 11379. (a) Except as otherwise provided in subdivision (b)
20 and in Article 7 (commencing with Section 4110) of Chapter 9 of
21 Division 2 of the Business and Professions Code, every person
22 who transports, imports into this state, sells, furnishes, administers,
23 or gives away, or offers to transport, import into this state, sell,
24 furnish, administer, or give away, or attempts to import into this
25 state or transport any controlled substance which is (1) classified
26 in Schedule III, IV, or V and which is not a narcotic drug, except
27 subdivision (i) of Section 11056, (2) specified in subdivision (d)
28 of Section 11054, except paragraphs (13), (14), (15), (20), (21),
29 (22), and (23) of subdivision (d), (3) specified in paragraph (11)
30 of subdivision (c) of Section 11056, (4) specified in paragraph (2)
31 or (3) of subdivision (f) of Section 11054, or (5) specified in
32 subdivision (d) or (e), except paragraph (3) of subdivision (e), or
33 specified in subparagraph (A) of paragraph (1) of subdivision (f),
34 of Section 11055, unless upon the prescription of a physician,
35 dentist, podiatrist, or veterinarian, licensed to practice in this state,
36 shall be punished by imprisonment in the state prison for a period
37 of two, three, or four years.

38 (b) Notwithstanding the penalty provisions of subdivision (a),
39 any person who transports for sale any controlled substances
40 specified in subdivision (a) within this state from one county to

1 another noncontiguous county shall be punished by imprisonment
2 in the state prison for three, six, or nine years.

3 SEC. 22. Section 11379.2 of the Health and Safety Code is
4 amended to read:

5 11379.2. Except as otherwise provided in Article 7
6 (commencing with Section 4110) of Chapter 9 of Division 2 of
7 the Business and Professions Code, every person who possesses
8 for sale or sells any controlled substance specified in subdivision
9 (i) of Section 11056 shall be punished by imprisonment in ~~the a~~
10 county jail for a period of not more than one year or in the state
11 prison.

12 SEC. 23. Section 11839.2 of the Health and Safety Code is
13 amended to read:

14 11839.2. The following controlled substances are authorized
15 for use in replacement narcotic therapy by licensed narcotic
16 treatment programs:

17 (a) Methadone.

18 (b) Levoalphacetylmethadol (LAAM) as specified in paragraph
19 (12) of subdivision (c) of Section 11055.

20 SEC. 24. Section 11875 of the Health and Safety Code is
21 amended to read:

22 11875. The following controlled substances are authorized for
23 use in replacement narcotic therapy by licensed narcotic treatment
24 programs:

25 (a) Methadone.

26 (b) Levoalphacetylmethadol (LAAM) as specified in paragraph
27 (12) of subdivision (c) of Section 11055.

28 (c) Buprenorphine products or combination products approved
29 by the federal Food and Drug Administration for maintenance or
30 detoxification of opioid dependence.

31 (d) Any other federally approved controlled substances used
32 for the purpose of narcotic replacement treatment.

33 SEC. 25. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: SB 360

VERSION: As Amended April 14, 2011

AUTHOR: DeSaulnier

SPONSOR: Attorney General

BOARD POSITION: None

SUBJECT: Controlled Substance Utilization Review and Evaluation System (CURES)

Affected Sections: Amend Section 6929 of the Family Code; Amend Sections 11054, 11055, 11056, 11057, 11161.5, 11162.1, 11165, 11165.1, 11212, 11350, 11351, 11252, 11353, 11354, 11355, 11377, 11378, 11378, 11379, 11379.2, 11839.2, 11875, and adds 11165.2 and 11165.3 to the Health and Safety Code

CURRENT STATUS: Senate Public Safety Committee hearing scheduled for May 3, 2011

EXISTING LAW:

The Uniform Controlled Substances Act places controlled substances into four schedules, found in Health and Safety Code Sections 11054 through 11057.

Health and Safety Code sections 11161.5 – 11162.1 establish guidelines for the printing of controlled substance security prescription forms, which is managed by the California Department of Justice (DOJ) California Security Prescription Printer Program. These provisions provide for the approval (or denial) of applicants who wish to be approved printers of security controlled substances prescription forms and requires approved printers to verify prescribers with the appropriate licensing board prior to printing; delivery of controlled substance prescription forms; and maintenance of records. These provisions also specify the content required to be printed on a security prescription form.

Health and Safety Code 11165 – 11165.1 provides for the Controlled Substances Utilization Review and Evaluation System (CURES), administered by the DOJ, to provide for monitoring of the prescribing and dispensing of Schedule II, III and IV controlled substances. Upon dispensing of a controlled substance in Schedules II – IV, the dispensing pharmacy or clinic must provide dispensing information to the DOJ within a specified time frame. CURES data is utilized by those approved to have access through the DOJ. This data can assist a prescriber or pharmacist to make informed decisions and detect those patients who may be attempting to abuse

controlled substances by obtaining multiple prescriptions through various practitioners. The board pays approximately \$92,000 annually to help fund the CURES system.

THIS BILL WOULD:

Amend Health and Safety Code Section 11054 – 11057 for the purpose of adding substances to Schedules I through IV, as follows:

Schedules I and II – adds Opiates

Schedule III – Adds depressants, and anabolic steroids and chorionic gonadotropin

Schedule IV – Adds depressants, stimulants

Amend Health and Safety Code sections 11161.5 – 11162.1 to specify additional information that is required of a security printer applicant, to include all levels of persons (i.e., managers, employees, contractors, etc.) that may have access to the controlled substances security forms. Amendments also specify that the fee the DOJ may assess would be sufficient to cover inspection of security printers. The amendments further specify that a security prescription form that is not in compliance with the section shall not be valid after July 1, 2012.

This bill would amend Health and Safety Code sections 11165 and 11165.1 to provide for the Internet access of information regarding the data in CURES. Amendments to section 11165.1 also allow a licensed health care practitioner, who is eligible to prescribe Schedule II, III or IV controlled substances, to apply to the DOJ to obtain approval to electronically access data in the Prescription Drug Monitoring Program.

This bill adds Section 11165.2 to the Health and Safety Code to provide for sanctions and/or penalties of those found to have violated any provision of Chapter 4 of the Health and Safety Code. This section specifies provisions for citations, the assessment and payment of administrative fines, orders of abatement, etc. The provisions allow for a subscriber to request an informal conference regarding any citation or fine; and provides for disciplinary action if fines are not paid within specified time frames.

This bill also adds Section 11165.3 to the Health and Safety Code to specify that the theft or loss of prescription information or forms shall be reported immediately to CURES, no later than three days after the discovery of the loss or theft. The section requires the theft or loss to be reported via (1) the Bureau of Narcotic Enforcement 1175 Reporting Theft/Loss Form or (2) through the CURES PDMP electronic system.

This bill would make the following conforming changes (update references) in the following sections:

1. Family Code Section 6929 - Defines various terms, including “LAAM.” This bill makes a conforming change to a reference to Section 11055 of the Health and Safety Code.
2. Health and Safety Code Section 11212 - Cross references substances in Schedule I for the purpose of research, instruction, or analysis.
3. Health and Safety Code Section 11350 – 11355 - Updates references to Schedule III, regarding possession / punishment.

4. a. Health and Safety Code Section 11377 – Punishment for possession. Updates references to Schedule II related to Ketamine, Cathine and norpseudoephedrine; and
b. Amends subdivision (a) of HSC 11377 to reference Pharmacy Law (commencing with 4110, not 4211)
5. Health and Safety Code Section 11378 – Cross reference to Schedule III updated
6. Health and Safety Code Section 11379-11379.2 – Updates cross references to Pharmacy Law section 4110 and updates cross references to Schedule III. Punishment.
7. Health and Safety Code Section 11839.2, 11875 – Updates cross reference to LAAM in Schedule II.

AUTHOR’S INTENT:

According to the author, SB 360 will update the CURES to allow electronic access to the Prescription Drug Monitoring Program (PDMP) launched in 2009. The PDMP provides authorized users, or “*subscribers*” (prescribers, pharmacists, etc.), access to patient controlled substance prescription information in real-time at the point of care – allowing a prescriber or a pharmacist to detect those who may be abusing controlled substances by obtaining multiple prescriptions. Also, this bill would provide safeguards against the theft and fraudulent use of controlled substance prescription pads.

PREVIOUS/RELATED LEGISLATION:

Prior to recent amendments, SB 260 (2011, Cannella) contained similar provisions. SB 260 was amended and now addresses provisions related to the reporting of transactions of ephedrine and other specified substances to the Department of Justice.

SB 734 (Torlakson) – Chapter 487, Statutes of 2005. This bill provided clean-up changes to facilitate the effective operation of the CURES, and the program duties of the Bureau of Narcotic Enforcement. The board had a “Oppose unless amended” position on the measure.

SB 1071 (DeSaulnier). 2010. This bill would have imposed a tax on every manufacturer and importer of a controlled substance specified in Schedules II, III or IV to secure funding for providing Patient Activity Reports (CURES data) to all practitioners and those who dispense controlled substances. The board did not take a position on the bill, which died in committee.

FISCAL IMPACT:

The enforcement of these provisions resides primarily with the Department of Justice. The board does not anticipate any significant impact. Minor impact to board operations could be absorbed within existing resources.

SUPPORT/OPPOSITION:

Unknown

HISTORY:**Date Action**

Apr. 26 Set for hearing May 3.

Apr. 14 From committee with author's amendments. Read second time and amended. Re-referred to Com. on PUB. S.

Mar. 31 Re-referred to Com. on PUB. S.

Mar. 22 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

Feb. 24 Referred to Com. on RLS.

Feb. 16 From printer. May be acted upon on or after March 18.

Feb. 15 Introduced. Read first time. To Com. on RLS. for assignment. To print.

Attachment 4

AMENDED IN ASSEMBLY APRIL 5, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 675

Introduced by Assembly Member Hagman
(Coauthors: Assembly Members Garrick, Gorell, Jeffries, and Silva)
~~(Coauthor: Senator Huff)~~
(Coauthors: Senators Harman and Huff)

February 17, 2011

An act to add Section 110.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 675, as amended, Hagman. Continuing education.

Existing law provides for the licensure and regulation of professions and vocations by boards within the Department of Consumer Affairs and these boards may require licensees to satisfy continuing education course requirements.

This bill would provide, if applicable, that continuing education *or competency* courses, as specified, that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education *or competency* course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a

provider that violates that requirement for no less than 5 years, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 110.6 is added to the Business and
2 Professions Code, to read:

3 110.6. Notwithstanding any other provision of law, if a board
4 described in Section 101 requires its licensees to satisfy continuing
5 education *or competency* requirements by pursuing a course of
6 continuing education *or competency*, the following shall apply:

7 (a) Continuing education *or competency* courses shall contain
8 only content relevant to the particular practice regulated by the
9 board pursuant to its laws and regulations. Continuing education
10 *or competency* courses that advance or promote labor organizing
11 on behalf of a union, or that advance or promote statutory or
12 regulatory changes, political candidates, political advocacy, or
13 political strategy shall not be considered content relevant to the
14 practice regulated by the board and shall not be acceptable for
15 meeting continuing education *or competency* requirements. For
16 the purposes of this section, “courses” includes institutes, seminars,
17 lectures, conferences, workshops, and any other public events.

18 (b) (1) To the extent applicable, if an approved provider offers
19 a course described in subdivision (a), the provider shall not
20 represent that the course is acceptable for meeting the continuing
21 education *or competency* requirements. If a provider violates this
22 requirement, the board shall withdraw its approval of the provider,
23 subject to paragraph (2).

24 (2) If, after the board provides the provider notice and an
25 opportunity to be heard, the board finds that the provider violated
26 the requirement in paragraph (1), the board shall withdraw approval
27 of the provider for no less than five years.

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 675

VERSION: As Amended April 5, 2011

AUTHOR: Hagman

SPONSOR: Author

COMMITTEE RECOMMENDED POSITION: None

SUBJECT: Continuing Education

Affected Sections: Add Section 110.6 of the Business and Professions Code.

CURRENT STATUS: Assembly Business, Professions and Consumer Protection
Committee hearing scheduled for May 3, 2011.

EXISTING LAW:

1. Establishes continuing education requirements for renewal of a pharmacist license.
2. Establishes the content of courses that satisfy the requirements.

THIS BILL WOULD:

1. Specify that acceptable education courses (continuing education and competency courses) must contain only content relevant to the particular practice.
2. Specify that the following types of courses shall not be acceptable:
 - a. Promote or advance labor organizing on behalf of a union
 - b. Advance or promote statutory or regulatory changes
 - c. Promote political candidates, political advocacy or political strategy
3. Specify that courses include institutes, seminars, conferences, workshops and any other public event.
4. Specify that a course provider is prohibiting from advertising that a course is acceptable to meet continuing education requirements when it does not and requires the board to withdraw approval of a provider should a violation occur.
5. Require the board to, after notice and an opportunity to be heard is provided, withdraw the approval of a provider for five years if the board determines that such a violation has occurred.

AUTHOR'S INTENT:

This bill would affirmatively preclude granting Continuing Education (CE) credits for attendance at political rallies, or from offering classes that advance or promote labor organizing, lobbying, candidate or political advocacy.

COMMENTS:

The amendments to this bill clarify that the provisions apply to both continuing education courses as well as competency coursework.

It is unclear if this bill would impact the board's current policy as well as the proposed regulation change currently under promulgation that awards licensees continuing education to attend a board meeting. Board staff requested clarification from the author's office, but has not received a response.

PRIOR HISTORY/RELATED BILLS:

Unknown

FISCAL IMPACT:

The board does not anticipate any significant impact. Any minor impact could be absorbed within existing resources.

SUPPORT/OPPOSITION:

Unknown

HISTORY:

Date	Action
Apr. 6	Re-referred to Com. on B., P. & C.P.
Apr. 5	From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended.
Mar. 29	In committee: Hearing postponed by committee.
Mar. 14	Re-referred to Com. on B., P. & C.P. pursuant to Assembly Rule 96.
Mar. 3	Referred to Coms. on HIGHER ED. and B., P. & C.P.
Feb. 18	From printer. May be heard in committee March 20.
Feb. 17	Read first time. To print.

ASSEMBLY BILL

No. 958

Introduced by Assembly Member Bill Berryhill

February 18, 2011

An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 110.5 is added to the Business and
- 2 Professions Code, to read:
- 3 110.5. (a) Notwithstanding any other provision of law and
- 4 except as provided in subdivisions (b) and (c), any accusation filed

1 against a licensee of a board described in Section 101, pursuant to
2 Section 11503 of the Government Code, shall be filed within one
3 year after the board discovers the act or omission alleged as the
4 ground for disciplinary action, or within four years after the act or
5 omission alleged as the ground for disciplinary action occurs,
6 whichever occurs first.

7 (b) If an alleged act or omission involves a minor, the four-year
8 limitations period provided for by subdivision (a) shall be tolled
9 until the minor reaches the age of majority.

10 (c) If a licensee intentionally conceals evidence of wrongdoing,
11 the four-year limitations period provided for by subdivision (a)
12 shall be tolled during that period of concealment.

13 SEC. 2. Section 1670.2 of the Business and Professions Code
14 is repealed.

15 ~~1670.2. (a) Except as otherwise provided in this section, any~~
16 ~~proceeding initiated by the board against a licensee for the violation~~
17 ~~of any provision of this chapter shall be filed within three years~~
18 ~~after the board discovers the act or omission alleged as the ground~~
19 ~~for disciplinary action, or within seven years after the act or~~
20 ~~omission alleged as the ground for disciplinary action occurs,~~
21 ~~whichever occurs first.~~

22 ~~(b) An accusation filed against a licensee pursuant to Section~~
23 ~~11503 of the Government Code alleging fraud or willful~~
24 ~~misrepresentation is not subject to the limitation in subdivision~~
25 ~~(a).~~

26 ~~(c) An accusation filed against a licensee pursuant to Section~~
27 ~~11503 of the Government Code alleging unprofessional conduct~~
28 ~~based on incompetence, gross negligence, or repeated negligent~~
29 ~~acts of the licensee is not subject to the limitation in subdivision~~
30 ~~(a) upon proof that the licensee intentionally concealed from~~
31 ~~discovery his or her incompetence, gross negligence, or repeated~~
32 ~~negligent acts.~~

33 ~~(d) If an alleged act or omission involves any conduct described~~
34 ~~in subdivision (c) of Section 1680 committed on a minor, the~~
35 ~~seven-year limitations period in subdivision (a) and the 10-year~~
36 ~~limitations period in subdivision (c) shall be tolled until the minor~~
37 ~~reaches the age of majority.~~

38 ~~(e) An accusation filed against a licensee pursuant to Section~~
39 ~~11503 of the Government Code alleging conduct described in~~
40 ~~subdivision (c) of Section 1680 not committed on a minor shall~~

1 ~~be filed within three years after the board discovers the act or~~
2 ~~omission alleged as the ground for disciplinary action, or within~~
3 ~~10 years after the act or omission alleged as the ground for~~
4 ~~disciplinary action occurs, whichever occurs first. This subdivision~~
5 ~~shall apply to a complaint alleging conduct received by the board~~
6 ~~on and after January 1, 2005.~~

7 ~~(f) In any allegation, accusation, or proceeding described in~~
8 ~~this section, the limitations period in subdivision (a) shall be tolled~~
9 ~~for the period during which material evidence necessary for~~
10 ~~prosecuting or determining whether a disciplinary action would~~
11 ~~be appropriate is unavailable to the board due to an ongoing~~
12 ~~criminal investigation.~~

13 SEC. 3. Section 2230.5 of the Business and Professions Code
14 is repealed.

15 ~~2230.5. (a) Except as provided in subdivisions (b), (c), and~~
16 ~~(e), any accusation filed against a licensee pursuant to Section~~
17 ~~11503 of the Government Code shall be filed within three years~~
18 ~~after the board, or a division thereof, discovers the act or omission~~
19 ~~alleged as the ground for disciplinary action, or within seven years~~
20 ~~after the act or omission alleged as the ground for disciplinary~~
21 ~~action occurs, whichever occurs first.~~

22 ~~(b) An accusation filed against a licensee pursuant to Section~~
23 ~~11503 of the Government Code alleging the procurement of a~~
24 ~~license by fraud or misrepresentation is not subject to the limitation~~
25 ~~provided for by subdivision (a).~~

26 ~~(c) An accusation filed against a licensee pursuant to Section~~
27 ~~11503 of the Government Code alleging unprofessional conduct~~
28 ~~based on incompetence, gross negligence, or repeated negligent~~
29 ~~acts of the licensee is not subject to the limitation provided for by~~
30 ~~subdivision (a) upon proof that the licensee intentionally concealed~~
31 ~~from discovery his or her incompetence, gross negligence, or~~
32 ~~repeated negligent acts.~~

33 ~~(d) If an alleged act or omission involves a minor, the seven-year~~
34 ~~limitations period provided for by subdivision (a) and the 10-year~~
35 ~~limitations period provided for by subdivision (c) shall be tolled~~
36 ~~until the minor reaches the age of majority.~~

37 ~~(e) An accusation filed against a licensee pursuant to Section~~
38 ~~11503 of the Government Code alleging sexual misconduct shall~~
39 ~~be filed within three years after the board, or a division thereof,~~
40 ~~discovers the act or omission alleged as the ground for disciplinary~~

1 action, or within 10 years after the act or omission alleged as the
2 ground for disciplinary action occurs, whichever occurs first. This
3 subdivision shall apply to a complaint alleging sexual misconduct
4 received by the board on and after January 1, 2002.

5 (f) ~~The limitations period provided by subdivision (a) shall be~~
6 ~~tolled during any period if material evidence necessary for~~
7 ~~prosecuting or determining whether a disciplinary action would~~
8 ~~be appropriate is unavailable to the board due to an ongoing~~
9 ~~criminal investigation.~~

10 SEC. 4. Section 2960.05 of the Business and Professions Code
11 is repealed.

12 2960.05. ~~(a) Except as provided in subdivisions (b), (c), and~~
13 ~~(e), any accusation filed against a licensee pursuant to Section~~
14 ~~11503 of the Government Code shall be filed within three years~~
15 ~~from the date the board discovers the alleged act or omission that~~
16 ~~is the basis for disciplinary action, or within seven years from the~~
17 ~~date the alleged act or omission that is the basis for disciplinary~~
18 ~~action occurred, whichever occurs first.~~

19 ~~(b) An accusation filed against a licensee pursuant to Section~~
20 ~~11503 of the Government Code alleging the procurement of a~~
21 ~~license by fraud or misrepresentation is not subject to the~~
22 ~~limitations set forth in subdivision (a).~~

23 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~
24 ~~for the length of time required to obtain compliance when a report~~
25 ~~required to be filed by the licensee or registrant with the board~~
26 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~
27 ~~1 is not filed in a timely fashion.~~

28 ~~(d) If an alleged act or omission involves a minor, the seven-year~~
29 ~~limitations period provided for by subdivision (a) and the 10-year~~
30 ~~limitations period provided for by subdivision (c) shall be tolled~~
31 ~~until the minor reaches the age of majority.~~

32 ~~(e) An accusation filed against a licensee pursuant to Section~~
33 ~~11503 of the Government Code alleging sexual misconduct shall~~
34 ~~be filed within three years after the board discovers the act or~~
35 ~~omission alleged as the ground for disciplinary action, or within~~
36 ~~10 years after the act or omission alleged as the ground for~~
37 ~~disciplinary action occurs, whichever occurs first. This subdivision~~
38 ~~shall apply to a complaint alleging sexual misconduct received by~~
39 ~~the board on and after January 1, 2002.~~

1 ~~(f) The limitations period provided by subdivision (a) shall be~~
2 ~~tolled during any period if material evidence necessary for~~
3 ~~prosecuting or determining whether a disciplinary action would~~
4 ~~be appropriate is unavailable to the board due to an ongoing~~
5 ~~criminal investigation.~~

6 SEC. 5. Section 3137 of the Business and Professions Code is
7 repealed.

8 ~~3137. (a) Except as otherwise provided in this section, any~~
9 ~~accusation filed against a licensee pursuant to Section 11503 of~~
10 ~~the Government Code for the violation of any provision of this~~
11 ~~chapter shall be filed within three years after the board discovers~~
12 ~~the act or omission alleged as the ground for disciplinary action,~~
13 ~~or within seven years after the act or omission alleged as the ground~~
14 ~~for disciplinary action occurs, whichever occurs first.~~

15 ~~(b) An accusation filed against a licensee pursuant to Section~~
16 ~~11503 of the Government Code alleging fraud or willful~~
17 ~~misrepresentation is not subject to the limitation in subdivision~~
18 ~~(a).~~

19 ~~(c) An accusation filed against a licensee pursuant to Section~~
20 ~~11503 of the Government Code alleging unprofessional conduct~~
21 ~~based on incompetence, gross negligence, or repeated negligent~~
22 ~~acts of the licensee is not subject to the limitation in subdivision~~
23 ~~(a) upon proof that the licensee intentionally concealed from~~
24 ~~discovery his or her incompetence, gross negligence, or repeated~~
25 ~~negligent acts.~~

26 ~~(d) If an alleged act or omission involves any conduct described~~
27 ~~in Section 726 committed on a minor, the 10-year limitations period~~
28 ~~in subdivision (c) shall be tolled until the minor reaches the age~~
29 ~~of majority.~~

30 ~~(e) An accusation filed against a licensee pursuant to Section~~
31 ~~11503 of the Government Code alleging conduct described in~~
32 ~~Section 726 shall be filed within three years after the board~~
33 ~~discovers the act or omission alleged as the ground for disciplinary~~
34 ~~action, or within 10 years after the act or omission alleged as the~~
35 ~~ground for disciplinary action occurs, whichever occurs first. This~~
36 ~~subdivision shall apply to a complaint alleging conduct received~~
37 ~~by the board on and after January 1, 2006.~~

38 ~~(f) In any allegation, accusation, or proceeding described in this~~
39 ~~section, the limitations period in subdivision (a) shall be tolled for~~
40 ~~the period during which material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would
2 be appropriate is unavailable to the board due to an ongoing
3 criminal investigation.

4 SEC. 6. Section 3750.51 of the Business and Professions Code
5 is repealed.

6 3750.51.—(a) Except as provided in subdivisions (b), (c), and
7 (c), any accusation filed against a licensee pursuant to Section
8 11503 of the Government Code shall be filed within three years
9 from the date the board discovers the alleged act or omission that
10 is the basis for disciplinary action, or within seven years from the
11 date the alleged act or omission that is the basis for disciplinary
12 action occurred, whichever occurs first.

13 (b) An accusation filed against a licensee pursuant to Section
14 11503 of the Government Code alleging the procurement of a
15 license by fraud or misrepresentation is not subject to the
16 limitations set forth in subdivision (a).

17 (c) The limitation provided for by subdivision (a) shall be tolled
18 for the length of time required to obtain compliance when a report
19 required to be filed by the licensee or registrant with the board
20 pursuant to Article 11 (commencing with Section 800) of Chapter
21 1 is not filed in a timely fashion.

22 (d) If an alleged act or omission involves a minor, the seven-year
23 limitations period provided for by subdivision (a) and the 10-year
24 limitations period provided for by subdivision (c) shall be tolled
25 until the minor reaches the age of majority.

26 (e) An accusation filed against a licensee pursuant to Section
27 11503 of the Government Code alleging sexual misconduct shall
28 be filed within three years after the board discovers the act or
29 omission alleged as the ground for disciplinary action, or within
30 10 years after the act or omission alleged as the ground for
31 disciplinary action occurs, whichever occurs first.

32 (f) The limitations period provided by subdivision (a) shall be
33 tolled during any period if material evidence necessary for
34 prosecuting or determining whether a disciplinary action would
35 be appropriate is unavailable to the board due to an ongoing
36 criminal investigation.

37 SEC. 7. Section 4982.05 of the Business and Professions Code
38 is repealed.

39 4982.05.—(a) Except as provided in subdivisions (b), (c), and
40 (e), any accusation filed against a licensee pursuant to Section

1 ~~11503 of the Government Code shall be filed within three years~~
2 ~~from the date the board discovers the alleged act or omission that~~
3 ~~is the basis for disciplinary action, or within seven years from the~~
4 ~~date the alleged act or omission that is the basis for disciplinary~~
5 ~~action occurred, whichever occurs first.~~

6 ~~(b) An accusation filed against a licensee pursuant to Section~~
7 ~~11503 of the Government Code alleging the procurement of a~~
8 ~~license by fraud or misrepresentation is not subject to the~~
9 ~~limitations set forth in subdivision (a).~~

10 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~
11 ~~for the length of time required to obtain compliance when a report~~
12 ~~required to be filed by the licensee or registrant with the board~~
13 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~
14 ~~1 is not filed in a timely fashion.~~

15 ~~(d) If an alleged act or omission involves a minor, the seven-year~~
16 ~~limitations period provided for by subdivision (a) and the 10-year~~
17 ~~limitations period provided for by subdivision (c) shall be tolled~~
18 ~~until the minor reaches the age of majority.~~

19 ~~(e) An accusation filed against a licensee pursuant to Section~~
20 ~~11503 of the Government Code alleging sexual misconduct shall~~
21 ~~be filed within three years after the board discovers the act or~~
22 ~~omission alleged as the grounds for disciplinary action, or within~~
23 ~~10 years after the act or omission alleged as the grounds for~~
24 ~~disciplinary action occurs, whichever occurs first. This subdivision~~
25 ~~shall apply to a complaint alleging sexual misconduct received by~~
26 ~~the board on and after January 1, 2002.~~

27 ~~(f) The limitations period provided by subdivision (a) shall be~~
28 ~~tolled during any period if material evidence necessary for~~
29 ~~prosecuting or determining whether a disciplinary action would~~
30 ~~be appropriate is unavailable to the board due to an ongoing~~
31 ~~criminal investigation.~~

32 ~~(g) For purposes of this section, “discovers” means the later of~~
33 ~~the occurrence of any of the following with respect to each act or~~
34 ~~omission alleged as the basis for disciplinary action:~~

35 ~~(1) The date the board received a complaint or report describing~~
36 ~~the act or omission.~~

37 ~~(2) The date, subsequent to the original complaint or report, on~~
38 ~~which the board became aware of any additional acts or omissions~~
39 ~~alleged as the basis for disciplinary action against the same~~
40 ~~individual.~~

1 ~~(3) The date the board receives from the complainant a written~~
2 ~~release of information pertaining to the complainant's diagnosis~~
3 ~~and treatment.~~

4 SEC. 8. Section 4990.32 of the Business and Professions Code
5 is repealed.

6 ~~4990.32. (a) Except as otherwise provided in this section, an~~
7 ~~accusation filed pursuant to Section 11503 of the Government~~
8 ~~Code against a licensee or registrant under the chapters the board~~
9 ~~administers and enforces shall be filed within three years from the~~
10 ~~date the board discovers the alleged act or omission that is the~~
11 ~~basis for disciplinary action or within seven years from the date~~
12 ~~the alleged act or omission that is the basis for disciplinary action~~
13 ~~occurred, whichever occurs first.~~

14 ~~(b) An accusation filed against a licensee alleging the~~
15 ~~procurement of a license by fraud or misrepresentation is not~~
16 ~~subject to the limitations set forth in subdivision (a).~~

17 ~~(c) The limitations period provided by subdivision (a) shall be~~
18 ~~tolled for the length of time required to obtain compliance when~~
19 ~~a report required to be filed by the licensee or registrant with the~~
20 ~~board pursuant to Article 11 (commencing with Section 800) of~~
21 ~~Chapter 1 is not filed in a timely fashion.~~

22 ~~(d) An accusation alleging sexual misconduct shall be filed~~
23 ~~within three years after the board discovers the act or omission~~
24 ~~alleged as the grounds for disciplinary action or within 10 years~~
25 ~~after the act or omission alleged as the grounds for disciplinary~~
26 ~~action occurred, whichever occurs first. This subdivision shall~~
27 ~~apply to a complaint alleging sexual misconduct received by the~~
28 ~~board on and after January 1, 2002.~~

29 ~~(e) If an alleged act or omission involves a minor, the seven-year~~
30 ~~limitations period provided for by subdivision (a) and the 10-year~~
31 ~~limitations period provided for by subdivision (d) shall be tolled~~
32 ~~until the minor reaches the age of majority. However, if the board~~
33 ~~discovers an alleged act of sexual contact with a minor under~~
34 ~~Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after~~
35 ~~the limitations periods described in this subdivision have otherwise~~
36 ~~expired, and there is independent evidence that corroborates the~~
37 ~~allegation, an accusation shall be filed within three years from the~~
38 ~~date the board discovers that alleged act.~~

39 ~~(f) The limitations period provided by subdivision (a) shall be~~
40 ~~tolled during any period if material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would
2 be appropriate is unavailable to the board due to an ongoing
3 criminal investigation.

4 (g) For purposes of this section, “discovers” means the latest
5 of the occurrence of any of the following with respect to each act
6 or omission alleged as the basis for disciplinary action:

7 (1) The date the board received a complaint or report describing
8 the act or omission.

9 (2) The date, subsequent to the original complaint or report, on
10 which the board became aware of any additional acts or omissions
11 alleged as the basis for disciplinary action against the same
12 individual.

13 (3) The date the board receives from the complainant a written
14 release of information pertaining to the complainant’s diagnosis
15 and treatment.

16 SEC. 9. Section 5561 of the Business and Professions Code is
17 repealed.

18 5561. All accusations against licensees charging the holder of
19 a license issued under this chapter with the commission of any act
20 constituting a cause for disciplinary action shall be filed with the
21 board within five years after the board discovers, or through the
22 use of reasonable diligence should have discovered, the act or
23 omission alleged as the ground for disciplinary action, whichever
24 occurs first, but not more than 10 years after the act or omission
25 alleged as the ground for disciplinary action. However, with respect
26 to an accusation alleging a violation of Section 5579, the accusation
27 may be filed within three years after the discovery by the board
28 of the alleged facts constituting the fraud or misrepresentation
29 prohibited by Section 5579.

30 SEC. 10. Section 5661 of the Business and Professions Code
31 is repealed.

32 5661. All accusations against a licensee shall be filed within
33 three years after the board discovers, or through the use of
34 reasonable diligence should have discovered, the act or omission
35 alleged as the ground for disciplinary action or within six years
36 after the act or omission alleged as the ground for disciplinary
37 action, whichever occurs first. However, with respect to an
38 accusation alleging a violation of Section 5667, the accusation
39 may be filed within three years after the discovery by the board

1 of the alleged facts constituting the fraud or misrepresentation
2 prohibited by Section 5667.

3 If any accusation is not filed within the time provided in this
4 section, no action against a licensee shall be commenced under
5 this article.

6 SEC. 11. Section 7686.5 of the Business and Professions Code
7 is repealed.

8 ~~7686.5. All accusations against licensees shall be filed with~~
9 ~~the bureau within two years after the performance of the act or~~
10 ~~omission alleged as the ground for disciplinary action; provided,~~
11 ~~however, that the foregoing provision shall not constitute a defense~~
12 ~~to an accusation alleging fraud or misrepresentation as a ground~~
13 ~~for disciplinary action. The cause for disciplinary action in such~~
14 ~~case shall not be deemed to have accrued until discovery, by the~~
15 ~~bureau, of the facts constituting the fraud or misrepresentation,~~
16 ~~and, in such case, the accusation shall be filed within three years~~
17 ~~after such discovery.~~

18 SEC. 12. Section 9884.20 of the Business and Professions
19 Code is repealed.

20 ~~9884.20. All accusations against automotive repair dealers~~
21 ~~shall be filed within three years after the performance of the act~~
22 ~~or omission alleged as the ground for disciplinary action, except~~
23 ~~that with respect to an accusation alleging fraud or~~
24 ~~misrepresentation as a ground for disciplinary action, the accusation~~
25 ~~may be filed within two years after the discovery, by the bureau,~~
26 ~~of the alleged facts constituting the fraud or misrepresentation.~~

27 SEC. 13. Section 9889.8 of the Business and Professions Code
28 is repealed.

29 ~~9889.8. All accusations against licensees shall be filed within~~
30 ~~three years after the act or omission alleged as the ground for~~
31 ~~disciplinary action, except that with respect to an accusation~~
32 ~~alleging a violation of subdivision (d) of Section 9889.3, the~~
33 ~~accusation may be filed within two years after the discovery by~~
34 ~~the bureau of the alleged facts constituting the fraud or~~
35 ~~misrepresentation prohibited by that section.~~

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: AB 958

VERSION: As Introduced February 18, 2011

AUTHOR: Berryhill

SPONSOR: Author

COMMITTEE RECOMMENDED POSITION: Oppose

SUBJECT: Regulatory boards: limitations periods

Affected Sections: An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code

CURRENT STATUS: Referred to Assembly Business, Professions and Consumer Protection Committee

EXISTING LAW:

Provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes these boards to pursue disciplinary action for various violations.

THIS BILL WOULD:

1. Require a board to file an accusation against a licensee within one year after the board discovers the act or omission alleged as the ground for disciplinary action, or within four years after the act or omission alleged as the ground for disciplinary action occurs, which occurs first.
2. Specify that if the act or omission involves a minor, the four year limitation period provided shall be tolled until the minor reaches the age of majority.
3. Specify that if a licensee intentionally conceals evidence of wrongdoing, the four-year limitations period provided shall be tolled during that period of concealment.
4. Remove separate statutory timeframes that are currently established for some programs.

AUTHOR'S INTENT:

"In order to foster a more cooperative relationship with business as well as ensure that the public good is met, California should put our licensing laws on the same level as criminal statutes of limitations. Treating Californians who are licensed worse than we treat most criminals is unacceptable and needs to be changed. AB 958 attempts to make this distinction and treat licensees fairly."

COMMENTS:

Consumers deserve swift investigations and the intent of this legislation is very consistent with the Consumer Protection Enforcement Initiative (CPEI). With the board's current resources, board staff would be unable to meet the necessary timelines mandated in this bill, which would result in the board's inability to pursue disciplinary action against licensees that undermine consumer protection.

The board currently has a 50% vacancy rate in authorized inspector/supervising inspector staff. The board cannot meet the timeframes necessary within existing resources.

FISCAL IMPACT:

Meeting this mandate is a resource issue. It is unclear at this time the number of additional staff that will be required as we have not had a full complement of staff nor realized the benefits of the additional PYs that were authorized via the BCP process as part of the CPEI.

The board would also anticipate an increase in the costs associated with the prosecution that occurs through the AG's Office.

SUPPORT/OPPOSITION:

Unknown

HISTORY:

Mar. 10 Referred to Com. on B., P. & C.P.
Feb. 20 From printer. May be heard in committee March 22.
Feb. 18 Read first time. To print.

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL

No. 541

Introduced by Senator Price

February 17, 2011

An act to ~~amend Sections 7000.5 and 7011 of~~ *add Section 40 to the Business and Professions Code, relating to ~~contractors~~ profession and vocations, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors' State License ~~Board~~. *Regulatory boards: expert consultants.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors' State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2016, and would specify that the board would be subject to review by the appropriate policy committees of the Legislature.

Vote: majority ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 40 is added to the Business and
 2 Professions Code, to read:
 3 40. (a) Subject to the standards described in Section 19130
 4 of the Government Code, any board, as defined in Section 22, the
 5 State Board of Chiropractic Examiners, or the Osteopathic Medical
 6 Board of California may enter into an agreement with an expert
 7 consultant to do any of the following:
 8 (1) Provide an expert opinion on enforcement-related matters,
 9 including providing testimony at an administrative hearing.
 10 (2) Assist the board as a subject matter expert in examination
 11 development, examination validation, or occupational analyses.
 12 (3) Evaluate the mental or physical health of a licensee or an
 13 applicant for a license as may be necessary to protect the public
 14 health and safety.
 15 (b) An executed contract between a board and an expert
 16 consultant shall be exempt from the provisions of Part 2
 17 (commencing with Section 10100) of Division 2 of the Public
 18 Contract Code.
 19 (c) Each board shall establish policies and procedures for the
 20 selection and use of expert consultants.
 21 SEC. 2. This act is an urgency statute necessary for the
 22 immediate preservation of the public peace, health, or safety within
 23 the meaning of Article IV of the Constitution and shall go into
 24 immediate effect. The facts constituting the necessity are:
 25 To ensure that licensees engaging in certain professions and
 26 vocations are adequately regulated at the earliest possible time

1 *in order to protect and safeguard consumers and the public in this*
2 *state, it is necessary that this act take effect immediately.*

3 ~~SECTION 1. Section 7000.5 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~7000.5. (a) There is in the Department of Consumer Affairs~~
6 ~~a Contractors' State License Board, which consists of 15 members.~~

7 ~~(b) Notwithstanding any other provision of law, the repeal of~~
8 ~~this section renders the board subject to review by the appropriate~~
9 ~~policy committees of the Legislature.~~

10 ~~(c) This section shall remain in effect only until January 1, 2016,~~
11 ~~and as of that date is repealed, unless a later enacted statute, that~~
12 ~~is enacted before January 1, 2016, deletes or extends that date.~~

13 ~~SEC. 2. Section 7011 of the Business and Professions Code is~~
14 ~~amended to read:~~

15 ~~7011. (a) The board, by and with the approval of the director,~~
16 ~~shall appoint a registrar of contractors and fix his or her~~
17 ~~compensation.~~

18 ~~(b) The registrar shall be the executive officer and secretary of~~
19 ~~the board and shall carry out all of the administrative duties as~~
20 ~~provided in this chapter and as delegated to him or her by the~~
21 ~~board.~~

22 ~~(c) For the purpose of administration of this chapter, there may~~
23 ~~be appointed a deputy registrar, a chief reviewing and hearing~~
24 ~~officer, and, subject to Section 159.5, other assistants and~~
25 ~~subordinates as may be necessary.~~

26 ~~(d) Appointments shall be made in accordance with the~~
27 ~~provisions of civil service laws.~~

28 ~~(e) This section shall remain in effect only until January 1, 2016,~~
29 ~~and as of that date is repealed, unless a later enacted statute, that~~
30 ~~is enacted before January 1, 2016, deletes or extends that date.~~

CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS



BILL NUMBER: SB 541

VERSION: As Amended April 13, 2011

AUTHOR: Price

SPONSOR: Author

COMMITTEE RECOMMENDED POSITION: None

SUBJECT: Regulatory Boards: Expert Consultants

Affected Sections: Add Section 40 to the Business and Professions Code

Current Status: Senate Business, Professions and Economic Development Committee
Hearing Scheduled for May 2, 2011

EXISTING LAW:

1. Business and Professions Code Section 157 allows the director, at the request of and with the consent of a board, to enter into a contract on behalf of the board.
2. Business and Professions Code Section 307 allows the director to contract for services of experts and consultants where necessary.

THIS BILL WOULD: Authorize the board to enter into an agreement with an expert consultant and would specify that an executed contract between the board and an expert is exempt from the Public Contract Code.

AUTHOR'S INTENT:

This measure will ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state.

COMMENTS:

This bill contains an urgency provision which will allow this measure to take effect immediately.

This proposal will aid the board in meeting its consumer protection mandate by ensuring the board has the ability to quickly enter into an agreement with an expert in disciplinary matters.

Further, this proposal will ensure that the board can timely and efficiently contract with experts whose services are needed to develop the pharmacist licensure exam.

FISCAL/ECONOMIC IMPACT:

Board staff does not anticipate any significant impact to board operations or funds.

SUPPORT/OPPOSITION:

Unknown

HISTORY:

Date	Action
Apr. 13	From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 12	Set for hearing May 2.
Apr. 11	Hearing postponed by committee.
Apr. 4	Set for hearing April 25.
Mar. 3	Referred to Com. on B., P. & E.D.
Feb. 18	From printer. May be acted upon on or after March 20.
Feb. 17	Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 544

Introduced by Senator Price

February 17, 2011

~~An act to add Section 1623 to the Business and Professions Code, relating to dentistry. An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and~~

Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Price. ~~Dental Board of California: collection of fees, fines, and cost recovery.~~ *Professions and vocations: regulatory boards.*

(1) Existing law provides for the licensure and regulation of profession and vocation licensees by various boards within the Department of Consumer Affairs. Within the department, there are healing arts boards and nonhealing arts boards. The department is under the control of the Director of Consumer Affairs.

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licensee has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licensee.

The bill would instead make those provisions applicable to all healing arts boards. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

The bill would require a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank prior to, among other things, granting a license to an applicant who is currently residing in another state or granting a petition for reinstatement of a revoked or surrendered license.

This bill would make it a crime to engage in the practice of healing arts without a current and valid license, except as specified; or to fraudulently buy, sell, or obtain a license to practice healing arts. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.

This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

The bill would require specified healing arts boards, on or after July 1, 2013, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.

The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the Pharmacists Recovery Program by January 1, 2013.

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants

within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

This bill would authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law establishes specified fees for licenses, permits, and certificates issued by the board. Existing law also sets forth specified fines and penalties for violations of the Dental Practice Act.~~

~~This bill would authorize the board to contract with a collection agency to collect outstanding fees, fines, or cost recovery amounts from persons who owe those moneys to the board, as specified. The bill would require the contract with a collection agency to contain specified safeguards to protect an individual's personal information from unauthorized disclosure and to provide for the liability of the collection agency for the unauthorized use or disclosure of that information.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Consumer Health Protection Enforcement Act.*

3 *SEC. 2. (a) The Legislature finds and declares the following:*

4 *(1) In recent years, it has been reported that many of the healing*
5 *arts boards within the Department of Consumer Affairs take, on*
6 *average, more than three years to investigate and prosecute*
7 *violations of law, a timeframe that does not adequately protect*
8 *consumers.*

9 *(2) The excessive amount of time that it takes healing arts boards*
10 *to investigate and prosecute licensed professionals who have*
11 *violated the law has been caused, in part, by legal and procedural*
12 *impediments to the enforcement programs.*

13 *(3) Both consumers and licensees have an interest in the quick*
14 *resolution of complaints and disciplinary actions. Consumers need*
15 *prompt action against licensees who do not comply with*
16 *professional standards, and licensees have an interest in timely*
17 *review of consumer complaints to keep the trust of their patients.*

18 *(b) It is the intent of the Legislature that the changes made by*
19 *this act will improve efficiency and increase accountability within*
20 *the healing arts boards of the Department of Consumer Affairs,*
21 *and will remain consistent with the long-held paramount goal of*
22 *consumer protection.*

23 *(c) It is further the intent of the Legislature that the changes*
24 *made by this act will provide healing arts boards within the*
25 *Department of Consumer Affairs with the regulatory tools and*
26 *authorities necessary to reduce the average timeframe for*
27 *investigating and prosecuting violations of law by healing arts*
28 *practitioners to between 12 and 18 months.*

29 *SEC. 3. Section 40 is added to the Business and Professions*
30 *Code, to read:*

31 *40. (a) Notwithstanding any other provision of law, for*
32 *purposes of a board investigation, a state agency shall, upon*
33 *receiving a request in writing from a board for records about a*
34 *particular licensee, immediately provide to the board all records*
35 *about a licensee in the custody of the state agency, including, but*
36 *not limited to, confidential records, medical records, and records*
37 *related to closed or open investigations.*

1 (b) If a state agency has knowledge that a person it is
2 investigating is licensed by a board, the state agency shall notify
3 the board that it is conducting an investigation against one of its
4 licentiates. The notification of investigation to the board shall
5 include the name, address, and, if known, the professional license
6 type and license number of the person being investigated and the
7 name and address or telephone number of a person who can be
8 contacted for further information about the investigation. The state
9 agency shall cooperate with the board in providing any requested
10 information.

11 (c) A board shall maintain the confidentiality of any personally
12 identifying information contained in the records maintained
13 pursuant to this section, and shall not share, sell, or transfer the
14 information to any third party unless it is otherwise authorized by
15 federal or state law.

16 SEC. 4. Section 42 is added to the Business and Professions
17 Code, to read:

18 42. Notwithstanding any other provision of law, all local and
19 state law enforcement agencies, state and local governments, state
20 agencies, licensed health care facilities, and employers of a
21 licensee of a board shall provide records to the board upon request
22 prior to receiving payment from the board for the cost of providing
23 the records. These records include, but are not limited to,
24 confidential records, medical records, and records related to closed
25 or open investigations.

26 SEC. 5. Section 44 is added to the Business and Professions
27 Code, to read:

28 44. (a) A licensee of a board shall not include or permit to be
29 included any of the following provisions in an agreement to settle
30 a civil litigation action filed by a consumer arising from the
31 licensee's practice, whether the agreement is made before or after
32 the filing of an action:

33 (1) A provision that prohibits another party to the dispute from
34 contacting or cooperating with the board.

35 (2) A provision that prohibits another party to the dispute from
36 filing a complaint with the board.

37 (3) A provision that requires another party to the dispute to
38 withdraw a complaint he or she has filed with the board.

39 (b) A provision described in subdivision (a) is void as against
40 public policy.

1 (c) A violation of this section constitutes unprofessional conduct
2 and may subject the licensee to disciplinary action.

3 (d) If a board complies with Section 2220.7, that board shall
4 not be subject to the requirements of this section.

5 SEC. 6. Section 116 of the Business and Professions Code is
6 amended to read:

7 116. (a) The director or his or her designee may audit and
8 review, upon his or her own initiative, or upon the request of a
9 consumer or licensee, inquiries and complaints regarding licensees,
10 dismissals of disciplinary cases, the opening, conduct, or closure
11 of investigations, informal conferences, and discipline short of
12 formal accusation by the Medical Board of California, the allied
13 health professional boards, and the California Board of Podiatric
14 Medicine any of the healing arts boards described in Division 2
15 (commencing with Section 500). The director may make
16 recommendations for changes to the disciplinary system to the
17 appropriate board, the Legislature, or both, for their consideration.

18 (b) The director shall report to the Chairpersons of the Senate
19 Committee on Business and Professions Committee and Economic
20 Development and the Assembly Committee on Health Committee
21 annually, commencing March 1, 1995, regarding his or her findings
22 from any audit, review, or monitoring and evaluation conducted
23 pursuant to this section.

24 SEC. 7. Section 155 of the Business and Professions Code is
25 amended to read:

26 155. (a) In accordance with Section 159.5, the director may
27 employ such investigators, inspectors, and deputies as are necessary
28 to properly to investigate and prosecute all violations of any law,
29 the enforcement of which is charged to the department or to any
30 board, agency, or commission in the department.

31 (b) It is the intent of the Legislature that inspectors used by
32 boards, bureaus, or commissions in the department shall not be
33 required to be employees of the Division of Investigation, but may
34 either be employees of, or under contract to, the boards, bureaus,
35 or commissions. Contracts for services shall be consistent with
36 Article 4.5 (commencing with Section 19130) of Chapter 6 of Part
37 2 of Division 5 of Title 2 of the Government Code. All civil service
38 employees currently employed as inspectors whose functions are
39 transferred as a result of this section shall retain their positions,
40 status, and rights in accordance with Section 19994.10 of the

1 Government Code and the State Civil Service Act (Part 2
2 (commencing with Section 18500) of Division 5 of Title 2 of the
3 Government Code).

4 (c) *Investigators used by any healing arts board, as described*
5 *in Division 2 (commencing with Section 500), shall not be required*
6 *to be employees of the Division of Investigation and a healing arts*
7 *board may contract for investigative services provided by the*
8 *Department of Justice.*

9 (e)

10 (d) Nothing in this section limits the authority of, or prohibits,
11 investigators in the Division of Investigation in the conduct of
12 inspections or investigations of any licensee, or in the conduct of
13 investigations of any officer or employee of a board or the
14 department at the specific request of the director or his or her
15 designee.

16 SEC. 8. *Section 159.5 of the Business and Professions Code*
17 *is amended to read:*

18 159.5. There is in the department the Division of Investigation.
19 The division is in the charge of a person with the title of chief of
20 the division. *There is in the division the Health Quality*
21 *Enforcement Unit. The primary responsibility of the unit is to*
22 *investigate complaints against licensees and applicants within the*
23 *jurisdiction of the healing arts boards described in Section 720.*

24 Except as provided in Section ~~160~~, ~~investigators who have the~~
25 ~~authority of peace officers, 16 of Chapter 1394 of the Statutes of~~
26 ~~1970, all positions for the personnel necessary to provide~~
27 ~~investigative services, as specified in subdivision (a) of Section~~
28 ~~160 Section 160 of this code and in subdivision (a) (b) of Section~~
29 ~~830.3 of the Penal Code, shall be in the division and the personnel~~
30 ~~shall be appointed by the director.~~

31 SEC. 9. *Section 505 is added to the Business and Professions*
32 *Code, to read:*

33 505. (a) *Each healing arts board shall report annually to the*
34 *department and the Legislature, not later than October 1 of each*
35 *year, the following information:*

36 (1) *The total number of complaints closed or resolved without*
37 *discipline, prior to accusation.*

38 (2) *The total number of complaints and reports referred for*
39 *formal investigation.*

1 (3) *The total number of accusations filed and the final*
2 *disposition of accusations through the board and court review,*
3 *respectively.*

4 (4) *The total number of citations issued, with fines and without*
5 *fines, and the number of public letters of reprimand, letters of*
6 *admonishment, or other similar action issued, if applicable.*

7 (5) *The total number of final licensee disciplinary actions taken,*
8 *by category.*

9 (6) *The total number of cases in process for more than six*
10 *months, more than 12 months, more than 18 months, and more*
11 *than 24 months, from receipt of a complaint by the board.*

12 (7) *The average time in processing complaints, from original*
13 *receipt of the complaint by the board, for all cases, at each stage*
14 *of the disciplinary process and court review, respectively.*

15 (8) *The total number of licensees in diversion or on probation*
16 *for alcohol or drug abuse, and the number of licensees successfully*
17 *completing diversion programs or probation, and failing to do so,*
18 *respectively.*

19 (9) *The total number of probation violation reports and*
20 *probation revocation filings, and their dispositions.*

21 (10) *The total number of petitions for reinstatement, and their*
22 *dispositions.*

23 (b) *“Action,” for purposes of this section, includes proceedings*
24 *brought by, or on behalf of, the healing arts board against licensees*
25 *for unprofessional conduct that have not been finally adjudicated,*
26 *as well as disciplinary actions taken against licensees.*

27 (c) *A board that complies with Section 2313 shall not be subject*
28 *to the requirements of this section.*

29 (d) *A report to be submitted pursuant to this section shall be*
30 *submitted in compliance with Section 9795 of the Government*
31 *Code.*

32 (e) *This section shall become inoperative on October 1, 2016.*

33 *SEC. 10. Section 726 of the Business and Professions Code is*
34 *amended to read:*

35 726. (a) *The commission of any act of sexual abuse,*
36 *misconduct, or relations with a patient, client, or customer*
37 *constitutes unprofessional conduct and grounds for disciplinary*
38 *action for any person licensed under this division; and under any*
39 *initiative act referred to in this division—~~and under Chapter 17~~*
40 *(commencing with Section 9000) of Division 3.*

(b) For purposes of Division 1.5 (commencing with Section 475), the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board described in this division.

~~This~~

(c) This section shall not apply to sexual contact between a ~~physician and surgeon~~ licensee and his or her spouse or person in an equivalent domestic relationship when that ~~physician and surgeon~~ licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

SEC. 11. Section 734 is added to the Business and Professions Code, to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 12. Section 735 is added to the Business and Professions Code, to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

1 *SEC. 13. Section 736 is added to the Business and Professions*
2 *Code, to read:*

3 736. (a) *The use or prescribing for or administering to himself*
4 *or herself of any controlled substance; or the use of any of the*
5 *dangerous drugs specified in Section 4022, or of alcoholic*
6 *beverages, to the extent or in such a manner as to be dangerous*
7 *or injurious to the licensee, or to any other person or to the public,*
8 *or to the extent that the use impairs the ability of the licensee to*
9 *practice safely; or conviction of any misdemeanor or felony*
10 *involving the use, consumption, or self-administration of any of*
11 *the substances referred to in this section, or conviction of any*
12 *combination thereof, constitutes unprofessional conduct. The*
13 *record of the conviction is conclusive evidence of the*
14 *unprofessional conduct.*

15 (b) *A plea or verdict of guilty or a conviction following a plea*
16 *of nolo contendere is deemed to be a conviction within the meaning*
17 *of this section. Discipline may be ordered against a licensee in*
18 *accordance with the laws and regulations of the healing arts board*
19 *or the board may order the denial of the license when the time for*
20 *appeal has elapsed or the judgment of conviction has been affirmed*
21 *on appeal or when an order granting probation is made suspending*
22 *imposition of sentence, irrespective of a subsequent order under*
23 *the provisions of Section 1203.4 of the Penal Code allowing that*
24 *person to withdraw his or her plea of guilty and to enter a plea of*
25 *not guilty, or setting aside the verdict of guilty, or dismissing the*
26 *accusation, complaint, information, or indictment.*

27 (c) *A violation of subdivision (a) is a misdemeanor, and upon*
28 *conviction shall be punished by a fine of up to ten thousand dollars*
29 *(\$10,000), or by imprisonment in the county jail of up to six*
30 *months, or by both that fine and imprisonment.*

31 *SEC. 14. Section 737 is added to the Business and Professions*
32 *Code, to read:*

33 737. *It shall be unprofessional conduct for any licensee of a*
34 *healing arts board to fail to comply with the following:*

35 (a) *Furnish information in a timely manner to the healing arts*
36 *board or the board's investigators or representatives if requested*
37 *by the board.*

38 (b) *Cooperate and participate in any investigation or other*
39 *regulatory or disciplinary proceeding pending against the licensee.*
40 *However, this subdivision shall not be construed to deprive a*

1 *licensee of any privilege guaranteed by the Fifth Amendment to*
2 *the Constitution of the United States, or any other constitutional*
3 *or statutory privileges. This subdivision shall not be construed to*
4 *require a licensee to cooperate with a request that requires him*
5 *or her to waive any constitutional or statutory privilege or to*
6 *comply with a request for information or other matters within an*
7 *unreasonable period of time in light of the time constraints of the*
8 *licensee's practice. Any exercise by a licensee of any constitutional*
9 *or statutory privilege shall not be used against the licensee in a*
10 *regulatory or disciplinary proceeding against the licensee.*

11 *SEC. 15. Section 802.1 of the Business and Professions Code*
12 *is amended to read:*

13 *802.1. (a) (1) A ~~physician and surgeon, osteopathic physician~~*
14 *~~and surgeon, and a doctor of podiatric medicine shall report either~~*
15 *~~licensee of a healing arts board described in this division shall~~*
16 *~~report any of the following to the entity that issued his or her~~*
17 *~~license:~~*

18 *(A) The bringing of an indictment or information charging a*
19 *felony against the licensee.*

20 *(B) The conviction of the licensee, including any verdict of*
21 *guilty, or plea of guilty or no contest, of any felony or*
22 *misdemeanor.*

23 *(C) Any disciplinary action taken by another licensing entity or*
24 *authority of this state or of another state or an agency of the federal*
25 *government.*

26 *(2) The report required by this subdivision shall be made in*
27 *writing within 30 days of the date of the bringing of the indictment*
28 *~~or information or of the conviction the charging of a felony, or of~~*
29 *~~the arrest, conviction, or disciplinary action.~~*

30 *(b) Failure to make a report required by this section shall be a*
31 *public offense punishable by a fine not to exceed five thousand*
32 *dollars (\$5,000) and shall constitute unprofessional conduct.*

33 *SEC. 16. Section 803 of the Business and Professions Code is*
34 *amended to read:*

35 *803. (a) Except as provided in subdivision (b), within 10 days*
36 *after a judgment by a court of this state that a person who holds a*
37 *license, certificate, or other similar authority from the Board of*
38 *~~Behavioral Sciences or from an agency mentioned in subdivision~~*
39 *~~(a) of Section 800 (except a person licensed pursuant to Chapter~~*
40 *~~3 (commencing with Section 1200)) a healing arts board described~~*

1 *in this division*, has committed a crime, or is liable for any death
2 or personal injury resulting in a judgment for an amount in excess
3 of thirty thousand dollars (\$30,000) caused by his or her
4 negligence, error or omission in practice, or his or her rendering
5 unauthorized professional services, the clerk of the court that
6 rendered the judgment shall report that fact to the agency that
7 issued the license, certificate, or other similar authority.

8 (b) For purposes of a physician and surgeon, osteopathic
9 physician and surgeon, or doctor of podiatric medicine, who is
10 liable for any death or personal injury resulting in a judgment of
11 any amount caused by his or her negligence, error or omission in
12 practice, or his or her rendering unauthorized professional services,
13 the clerk of the court that rendered the judgment shall report that
14 fact to the ~~agency~~ *board* that issued the license.

15 *SEC. 17. Section 803.5 of the Business and Professions Code*
16 *is amended to read:*

17 803.5. (a) The district attorney, city attorney, or other
18 prosecuting agency shall notify the ~~Medical Board of California,~~
19 ~~the Osteopathic Medical Board of California, the California Board~~
20 ~~of Podiatric Medicine, the State Board of Chiropractic Examiners,~~
21 ~~or other appropriate allied health board,~~ *appropriate healing arts*
22 *board described in this division* and the clerk of the court in which
23 the charges have been filed, of any filings against a licensee of
24 that board charging a felony immediately upon obtaining
25 information that the defendant is a licensee of the board. The notice
26 shall identify the licensee and describe the crimes charged and the
27 facts alleged. The prosecuting agency shall also notify the clerk
28 of the court in which the action is pending that the defendant is a
29 licensee, and the clerk shall record prominently in the file that the
30 defendant holds a license from one of the boards described above.

31 (b) The clerk of the court in which a licensee of one of the
32 boards is convicted of a crime shall, within 48 hours after the
33 conviction, transmit a certified copy of the record of conviction
34 to the applicable board.

35 *SEC. 18. Section 803.6 of the Business and Professions Code*
36 *is amended to read:*

37 803.6. (a) The clerk of the court shall transmit any felony
38 preliminary hearing transcript concerning a defendant licensee to
39 the ~~Medical Board of California, the Osteopathic Medical Board~~
40 ~~of California, the California Board of Podiatric Medicine, or other~~

1 ~~appropriate allied health board, as applicable, appropriate healing~~
2 ~~arts board described in this division~~ where the total length of the
3 transcript is under 800 pages and shall notify the appropriate board
4 of any proceeding where the transcript exceeds that length.

5 (b) In any case where a probation report on a licensee is prepared
6 for a court pursuant to Section 1203 of the Penal Code, a copy of
7 that report shall be transmitted by the probation officer to the
8 ~~appropriate healing arts board~~.

9 *SEC. 19. Section 803.7 is added to the Business and Professions*
10 *Code, to read:*

11 *803.7. The Department of Justice shall ensure that subsequent*
12 *reports and subsequent disposition information authorized to be*
13 *issued to any board identified in Section 101 are submitted to that*
14 *board within 30 days from notification of subsequent arrests,*
15 *convictions, or other updates.*

16 *SEC. 20. Section 803.8 is added to the Business and Professions*
17 *Code, to read:*

18 *803.8. (a) The office of the Attorney General shall serve, or*
19 *submit to a healing arts board for service, an accusation within*
20 *60 calendar days of receipt from the healing arts board.*

21 *(b) The office of the Attorney General shall serve, or submit to*
22 *a healing arts board for service, a default decision within five days*
23 *following the time period allowed for the filing of a notice of*
24 *defense.*

25 *(c) The office of the Attorney General shall set a hearing date*
26 *within three days of receiving a notice of defense, unless the*
27 *healing arts board gives the office of the Attorney General*
28 *instruction otherwise.*

29 *SEC. 21. Section 822 of the Business and Professions Code is*
30 *amended to read:*

31 *822. If a licensing agency determines that its licensee's ability*
32 *to practice his or her profession safely is impaired because the*
33 *licensee is mentally ill, or physically ill affecting competency,*
34 *the licensing agency may take action by any one of the following*
35 *methods:*

36 (a) Revoking the licensee's certificate or license.

37 (b) Suspending the licensee's right to practice.

38 (c) Placing the licensee on probation.

1 (d) Taking such other action in relation to the licentiate as the
2 licensing agency in its discretion deems proper, *including issuing*
3 *a limited or restricted license.*

4 The licensing agency shall not reinstate a revoked or suspended
5 certificate or license *or lift any restrictions or limitations* until it
6 has received competent evidence of the absence or control of the
7 condition which caused its action and until it is satisfied that with
8 due regard for the public health and safety the person's right to
9 practice his or her profession may be safely reinstated.

10 SEC. 22. *Section 857 is added to the Business and Professions*
11 *Code, to read:*

12 857. (a) *Each healing arts board, the State Board of*
13 *Chiropractic Examiners, and the Osteopathic Medical Board of*
14 *California shall query the federal National Practitioner Data Bank*
15 *prior to any of the following:*

16 (1) *Granting a license to an applicant who is currently residing*
17 *in another state.*

18 (2) *Granting a license to an applicant who is currently or has*
19 *ever been licensed as a health care practitioner in California or*
20 *another state.*

21 (3) *Granting a petition for reinstatement of a revoked or*
22 *surrendered license.*

23 (b) *Notwithstanding subdivision (a), a healing arts board, the*
24 *State Board of Chiropractic Examiners, and the Osteopathic*
25 *Medical Board of California may query the federal National*
26 *Practitioner Data Bank prior to issuing any license.*

27 (c) *A healing arts board shall charge a fee to cover the actual*
28 *cost to conduct the queries described in this section.*

29 SEC. 23. *Article 16 (commencing with Section 880) is added*
30 *to Chapter 1 of Division 2 of the Business and Professions Code,*
31 *to read:*

32
33 *Article 16. Unlicensed Practice*
34

35 880. (a) (1) *It is a public offense, punishable by a fine not to*
36 *exceed one hundred thousand dollars (\$100,000), by imprisonment*
37 *in a county jail not to exceed one year, or by both that fine and*
38 *imprisonment, for:*

1 (A) Any person who does not hold a current and valid license
2 to practice a healing art under this division to engage in that
3 practice.

4 (B) Any person who fraudulently buys, sells, or obtains a license
5 to practice any healing art in this division or to violate any
6 provision of this division.

7 (2) Subparagraph (A) of paragraph (1) shall not apply to any
8 person who is already being charged with a crime under the
9 specific healing arts licensing provisions for which he or she
10 engaged in unauthorized practice.

11 (b) Notwithstanding any other provision of law, any person who
12 is licensed under this division, and who supervises the practice of
13 a healing art by any person who does not hold a current and valid
14 license to practice that healing art under this division, is guilty of
15 a public crime, punishable by a fine not to exceed one hundred
16 thousand dollars (\$100,000), by imprisonment in a county jail not
17 to exceed one year, or by both that fine and imprisonment.

18 SEC. 24. Section 1688 is added to the Business and Professions
19 Code, to read:

20 1688. (a) The board may delegate to its executive officer the
21 authority to adopt a proposed default decision where an
22 administrative action to revoke a license has been filed and the
23 licensee has failed to file a notice of defense or to appear at the
24 hearing and a proposed default decision revoking the license has
25 been issued.

26 (b) The board may delegate to its executive officer the authority
27 to adopt a proposed settlement agreement where an administrative
28 action to revoke a license has been filed by the board and the
29 licensee has agreed to the revocation or surrender of his or her
30 license.

31 (c) The executive officer shall, at scheduled board meetings,
32 report to the board the number of proposed default decisions or
33 proposed settlement agreements adopted pursuant to this section.

34 SEC. 25. Section 1688.1 is added to the Business and
35 Professions Code, to read:

36 1688.1. (a) Notwithstanding Section 11415.60 of the
37 Government Code, the board may enter into a settlement with a
38 licensee or applicant in lieu of the issuance of an accusation or
39 statement of issues against that licensee or applicant, as applicable.

1 ***(b) The settlement shall include language identifying the factual***
2 ***basis for the action being taken and a list of the statutes or***
3 ***regulations violated.***

4 ***(c) A person who enters a settlement pursuant to this section is***
5 ***not precluded from filing a petition, in the timeframe permitted by***
6 ***law, to modify the terms of the settlement or petition for early***
7 ***termination of probation, if probation is part of the settlement.***

8 ***(d) Any settlement against a licensee executed pursuant to this***
9 ***section shall be considered discipline and a public record and***
10 ***shall be posted on the applicable board's Internet Web site. Any***
11 ***settlement against an applicant executed pursuant to this section***
12 ***shall be considered a public record and shall be posted on the***
13 ***applicable board's Internet Web site.***

14 ***(e) The executive officer shall, at scheduled board meetings,***
15 ***report to the board the number of proposed settlement agreements***
16 ***adopted pursuant to this section.***

17 ***SEC. 26. Section 1688.2 is added to the Business and***
18 ***Professions Code, to read:***

19 ***1688.2. (a) The license of a licensee shall be suspended***
20 ***automatically during any time that the licensee is incarcerated***
21 ***after conviction of a felony, regardless of whether the conviction***
22 ***has been appealed. The board shall, immediately upon receipt of***
23 ***the certified copy of the record of conviction, determine whether***
24 ***the license of the licensee has been automatically suspended by***
25 ***virtue of his or her incarceration, and if so, the duration of that***
26 ***suspension. The board shall notify the licensee in writing of the***
27 ***license suspension and of his or her right to elect to have the issue***
28 ***of penalty heard as provided in subdivision (d).***

29 ***(b) Upon receipt of the certified copy of the record of conviction,***
30 ***if after a hearing before an administrative law judge from the***
31 ***Office of Administrative Hearings it is determined that the felony***
32 ***for which the licensee was convicted was substantially related to***
33 ***the qualifications, functions, or duties of a licensee, the board***
34 ***shall suspend the license until the time for appeal has elapsed, if***
35 ***no appeal has been taken, or until the judgment of conviction has***
36 ***been affirmed on appeal or has otherwise become final, and until***
37 ***further order of the board.***

38 ***(c) Notwithstanding subdivision (b), a conviction of a charge***
39 ***of violating any federal statute or regulation or any statute or***
40 ***regulation of this state, regulating dangerous drugs or controlled***

1 substances, or a conviction of Section 187, 261, 262, or 288 of the
2 Penal Code, shall be conclusively presumed to be substantially
3 related to the qualifications, functions, or duties of a licensee and
4 no hearing shall be held on this issue. However, upon its own
5 motion or for good cause shown, the board may decline to impose
6 or may set aside the suspension when it appears to be in the interest
7 of justice to do so, with due regard to maintaining the integrity of,
8 and confidence in, the practice regulated by the board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the statutes and regulations of the board when
11 the time for appeal has elapsed, the judgment of conviction has
12 been affirmed on appeal, or an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent
14 order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

18 (2) The issue of penalty shall be heard by an administrative law
19 judge from the Office of Administrative Hearings. The hearing
20 shall not be had until the judgment of conviction has become final
21 or, irrespective of a subsequent order under Section 1203.4 of the
22 Penal Code, an order granting probation has been made
23 suspending the imposition of sentence; except that a licensee may,
24 at his or her option, elect to have the issue of penalty decided
25 before those time periods have elapsed. Where the licensee so
26 elects, the issue of penalty shall be heard in the manner described
27 in subdivision (b) at the hearing to determine whether the
28 conviction was substantially related to the qualifications, functions,
29 or duties of a licensee. If the conviction of a licensee who has made
30 this election is overturned on appeal, any discipline ordered
31 pursuant to this section shall automatically cease. Nothing in this
32 subdivision shall prohibit the board from pursuing disciplinary
33 action based on any cause other than the overturned conviction.

34 (e) The record of the proceedings resulting in a conviction,
35 including a transcript of the testimony in those proceedings, may
36 be received in evidence.

37 (f) Any other provision of law setting forth a procedure for the
38 suspension or revocation of a license issued by the board shall not
39 apply to proceedings conducted pursuant to this section.

1 SEC. 27. Section 1688.3 is added to the Business and
2 Professions Code, to read:

3 1688.3. (a) Except as otherwise provided, any proposed
4 decision or decision issued in accordance with the procedures set
5 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, that contains any
7 finding of fact that the licensee engaged in any act of sexual contact
8 with a patient, as defined in subdivision (c) of Section 729, or any
9 finding that the licensee has committed a sex offense, shall contain
10 an order revoking the license. The proposed decision shall not
11 contain any order staying the revocation of the licensee.

12 (b) As used in this section, the term sex offense shall mean any
13 of the following:

14 (1) Any offense for which registration is required by Section
15 290 of the Penal Code or a finding that a person committed such
16 an act.

17 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
18 or 647(a) or (d) of the Penal Code or a finding that a person
19 committed such an act.

20 (3) Any attempt to commit any of the offenses specified in this
21 section.

22 (4) Any offense committed or attempted in any other state or
23 against the laws of the United States which, if committed or
24 attempted in this state, would have been punishable as one or more
25 of the offenses specified in this section.

26 SEC. 28. Section 1688.4 is added to the Business and
27 Professions Code, to read:

28 1688.4. (a) Except as otherwise provided, with regard to an
29 individual who is required to register as a sex offender pursuant
30 to Section 290 of the Penal Code, or the equivalent in another
31 state or territory, under military law, or under federal law, the
32 board shall be subject to the following requirements:

33 (1) The board shall deny an application by the individual for
34 licensure in accordance with the procedures set forth in Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (2) If the individual is licensed under this chapter, the board
38 shall promptly revoke the license of the individual in accordance
39 with the procedures set forth in Chapter 5 (commencing with
40 Section 11500) of Part 1 of Division 3 of Title 2 of the Government

1 *Code. The board shall not stay the revocation and place the license*
2 *on probation.*

3 *(3) The board shall not reinstate or reissue the individual's*
4 *license. The board shall not issue a stay of license denial nor place*
5 *the license on probation.*

6 *(b) This section shall not apply to any of the following:*

7 *(1) An individual who has been relieved under Section 290.5 of*
8 *the Penal Code of his or her duty to register as a sex offender, or*
9 *whose duty to register has otherwise been formally terminated*
10 *under California law or the law of the jurisdiction that requires*
11 *his or her registration as a sex offender.*

12 *(2) An individual who is required to register as a sex offender*
13 *pursuant to Section 290 of the Penal Code solely because of a*
14 *misdemeanor conviction under Section 314 of the Penal Code.*
15 *However, nothing in this paragraph shall prohibit the board from*
16 *exercising its discretion to discipline a licensee under any other*
17 *provision of state law based upon the licensee's conviction under*
18 *Section 314 of the Penal Code.*

19 *(3) Any administrative adjudication proceeding under Chapter*
20 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
21 *2 of the Government Code that is fully adjudicated prior to January*
22 *1, 2008. A petition for reinstatement of a revoked or surrendered*
23 *license shall be considered a new proceeding for purposes of this*
24 *paragraph, and the prohibition against reinstating a license to an*
25 *individual who is required to register as a sex offender shall be*
26 *applicable.*

27 *SEC. 29. Section 1688.5 is added to the Business and*
28 *Professions Code, to read:*

29 *1688.5. Unless otherwise provided, on or after July 1, 2013,*
30 *the board shall post on its Internet Web site the following*
31 *information, including the name and license number, in its*
32 *possession, custody, or control regarding every licensee for which*
33 *the board licenses:*

34 *(a) With regard to the status of every license, whether or not*
35 *the licensee or former licensee is in good standing, subject to a*
36 *temporary restraining order, subject to an interim suspension*
37 *order, subject to a restriction or cease practice ordered pursuant*
38 *to Section 23 of the Penal Code, or subject to any of the*
39 *enforcement actions described in Section 803.1.*

1 (b) With regard to prior discipline of a licensee, whether or not
2 the licensee or former licensee has been subject to discipline by
3 the board or by the board of another state or jurisdiction, as
4 described in Section 803.1.

5 (c) Any felony conviction of a licensee reported to the board.

6 (d) All current accusations filed by the Attorney General,
7 including those accusations that are on appeal. For purposes of
8 this paragraph, “current accusation” means an accusation that
9 has not been dismissed, withdrawn, or settled, and has not been
10 finally decided upon by an administrative law judge and the board
11 unless an appeal of that decision is pending.

12 (e) Any malpractice judgment or arbitration award imposed
13 against a licensee and reported to the board.

14 (f) Any hospital disciplinary action imposed against a licensee
15 that resulted in the termination or revocation of a licensee’s
16 hospital staff privileges for a medical disciplinary cause or reason
17 pursuant to Section 805.

18 (g) Any misdemeanor conviction of a licensee that results in a
19 disciplinary action or an accusation that is not subsequently
20 withdrawn or dismissed.

21 (h) Appropriate disclaimers and explanatory statements to
22 accompany the above information, including an explanation of
23 what types of information are not disclosed. These disclaimers
24 and statements shall be developed by the board and shall be
25 adopted by regulation.

26 (i) The information provided on the Internet shall be in
27 accordance with the California Public Records Act (Chapter 3.5
28 (commencing with Section 6250) of Division 7 of Title 1 of the
29 Government Code) and the Information Practices Act of 1977
30 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
31 of Division 3 of the Civil Code) and shall comply with the
32 Department of Consumer Affairs Guidelines for Access to Public
33 Records.

34 (j) Information provided on the Internet may not include
35 personal information, unless otherwise provided pursuant to this
36 chapter, including the home telephone number, date of birth, or
37 social security number. The information may not include the
38 licensee’s address, but may include the city and county of the
39 licensee’s address of record.

1 SEC. 30. Section 1688.6 is added to the Business and
2 Professions Code, to read:

3 1688.6. (a) Unless otherwise provided, if a licensee possesses
4 a license or is otherwise authorized to practice in any state other
5 than California or by any agency of the federal government and
6 that license or authority is suspended or revoked outright, the
7 California license of the licensee shall be suspended automatically
8 for the duration of the suspension or revocation, unless terminated
9 or rescinded as provided in subdivision (c). The board shall notify
10 the licensee of the license suspension and of his or her right to
11 have the issue of penalty heard as provided in this section.

12 (b) Upon its own motion or for good cause shown, the board
13 may decline to impose or may set aside the suspension when it
14 appears to be in the interest of justice to do so, with due regard
15 to maintaining the integrity of, and confidence in, the specific
16 healing art.

17 (c) The issue of penalty shall be heard by an administrative law
18 judge sitting alone or with a panel of the board, in the discretion
19 of the board. A licensee may request a hearing on the penalty and
20 that hearing shall be held within 90 days from the date of the
21 request. If the order suspending or revoking the license or authority
22 to practice is overturned on appeal, any discipline ordered
23 pursuant to this section shall automatically cease. Upon a showing
24 to the administrative law judge or panel by the licensee that the
25 out-of-state action is not a basis for discipline in California, the
26 suspension shall be rescinded. If an accusation for permanent
27 discipline is not filed within 90 days of the suspension imposed
28 pursuant to this section, the suspension shall automatically
29 terminate.

30 (d) The record of the proceedings that resulted in the suspension
31 or revocation of the licensee's out-of-state license or authority to
32 practice, including a transcript of the testimony therein, may be
33 received in evidence.

34 (e) This section shall not apply to a licensee who maintains his
35 or her primary practice in California, as evidenced by having
36 maintained a practice in this state for not less than one year
37 immediately preceding the date of suspension or revocation.
38 Nothing in this section shall preclude a licensee's license from
39 being suspended pursuant to any other provision of law.

1 (f) *This section shall not apply to a licensee whose license has*
2 *been surrendered, whose only discipline is a medical staff*
3 *disciplinary action at a federal hospital and not for medical*
4 *disciplinary cause or reason as that term is defined in Section 805,*
5 *or whose revocation or suspension has been stayed, even if the*
6 *licensee remains subject to terms of probation or other discipline.*

7 (g) *This section shall not apply to a suspension or revocation*
8 *imposed by a state that is based solely on the prior discipline of*
9 *the licensee by another state.*

10 (h) *The other provisions of this article setting forth a procedure*
11 *for the suspension or revocation of a licensee's license or*
12 *certificate shall not apply to summary suspensions issued pursuant*
13 *to this section. If a summary suspension has been issued pursuant*
14 *to this section, the licensee may request that the hearing on the*
15 *penalty conducted pursuant to subdivision (c) be held at the same*
16 *time as a hearing on the accusation.*

17 (i) *A board that complies with Section 2310 shall not be subject*
18 *to the requirements of this section.*

19 SEC. 31. *Section 1947.1 is added to the Business and*
20 *Professions Code, to read:*

21 1947.1. (a) *The board may delegate to its executive officer the*
22 *authority to adopt a proposed default decision where an*
23 *administrative action to revoke a license has been filed and the*
24 *licensee has failed to file a notice of defense or to appear at the*
25 *hearing and a proposed default decision revoking the license has*
26 *been issued.*

27 (b) *The board may delegate to its executive officer the authority*
28 *to adopt a proposed settlement agreement where an administrative*
29 *action to revoke a license has been filed by the board and the*
30 *licensee has agreed to the revocation or surrender of his or her*
31 *license.*

32 (c) *The executive officer shall, at scheduled board meetings,*
33 *report to the board the number of proposed default decisions or*
34 *proposed settlement agreements adopted pursuant to this section.*

35 SEC. 32. *Section 1947.2 is added to the Business and*
36 *Professions Code, to read:*

37 1947.2. (a) *Notwithstanding Section 11415.60 of the*
38 *Government Code, the board may enter into a settlement with a*
39 *licensee or applicant in lieu of the issuance of an accusation or*
40 *statement of issues against that licensee or applicant, as applicable.*

1 **(b)** *The settlement shall include language identifying the factual*
2 *basis for the action being taken and a list of the statutes or*
3 *regulations violated.*

4 **(c)** *A person who enters a settlement pursuant to this section is*
5 *not precluded from filing a petition, in the timeframe permitted by*
6 *law, to modify the terms of the settlement or petition for early*
7 *termination of probation, if probation is part of the settlement.*

8 **(d)** *Any settlement against a licensee executed pursuant to this*
9 *section shall be considered discipline and a public record and*
10 *shall be posted on the applicable board's Internet Web site. Any*
11 *settlement against an applicant executed pursuant to this section*
12 *shall be considered a public record and shall be posted on the*
13 *applicable board's Internet Web site.*

14 **(e)** *The executive officer shall, at scheduled board meetings,*
15 *report to the board the number of proposed settlement agreements*
16 *adopted pursuant to this section.*

17 **SEC. 33.** *Section 1947.3 is added to the Business and*
18 *Professions Code, to read:*

19 **1947.3.** *(a) The license of a licensee shall be suspended*
20 *automatically during any time that the licensee is incarcerated*
21 *after conviction of a felony, regardless of whether the conviction*
22 *has been appealed. The board shall, immediately upon receipt of*
23 *the certified copy of the record of conviction, determine whether*
24 *the license of the licensee has been automatically suspended by*
25 *virtue of his or her incarceration, and if so, the duration of that*
26 *suspension. The board shall notify the licensee in writing of the*
27 *license suspension and of his or her right to elect to have the issue*
28 *of penalty heard as provided in subdivision (d).*

29 **(b)** *Upon receipt of the certified copy of the record of conviction,*
30 *if after a hearing before an administrative law judge from the*
31 *Office of Administrative Hearings it is determined that the felony*
32 *for which the licensee was convicted was substantially related to*
33 *the qualifications, functions, or duties of a licensee, the board*
34 *shall suspend the license until the time for appeal has elapsed, if*
35 *no appeal has been taken, or until the judgment of conviction has*
36 *been affirmed on appeal or has otherwise become final, and until*
37 *further order of the board.*

38 **(c)** *Notwithstanding subdivision (b), a conviction of a charge*
39 *of violating any federal statute or regulation or any statute or*
40 *regulation of this state, regulating dangerous drugs or controlled*

1 *substances, or a conviction of Section 187, 261, 262, or 288 of the*
2 *Penal Code, shall be conclusively presumed to be substantially*
3 *related to the qualifications, functions, or duties of a licensee and*
4 *no hearing shall be held on this issue. However, upon its own*
5 *motion or for good cause shown, the board may decline to impose*
6 *or may set aside the suspension when it appears to be in the interest*
7 *of justice to do so, with due regard to maintaining the integrity of,*
8 *and confidence in, the practice regulated by the board.*

9 *(d) (1) Discipline may be ordered against a licensee in*
10 *accordance with the statutes and regulations of the board when*
11 *the time for appeal has elapsed, the judgment of conviction has*
12 *been affirmed on appeal, or an order granting probation is made*
13 *suspending the imposition of sentence, irrespective of a subsequent*
14 *order under Section 1203.4 of the Penal Code allowing the person*
15 *to withdraw his or her plea of guilty and to enter a plea of not*
16 *guilty, setting aside the verdict of guilty, or dismissing the*
17 *accusation, complaint, information, or indictment.*

18 *(2) The issue of penalty shall be heard by an administrative law*
19 *judge from the Office of Administrative Hearings. The hearing*
20 *shall not be had until the judgment of conviction has become final*
21 *or, irrespective of a subsequent order under Section 1203.4 of the*
22 *Penal Code, an order granting probation has been made*
23 *suspending the imposition of sentence; except that a licensee may,*
24 *at his or her option, elect to have the issue of penalty decided*
25 *before those time periods have elapsed. Where the licensee so*
26 *elects, the issue of penalty shall be heard in the manner described*
27 *in subdivision (b) at the hearing to determine whether the*
28 *conviction was substantially related to the qualifications, functions,*
29 *or duties of a licensee. If the conviction of a licensee who has made*
30 *this election is overturned on appeal, any discipline ordered*
31 *pursuant to this section shall automatically cease. Nothing in this*
32 *subdivision shall prohibit the board from pursuing disciplinary*
33 *action based on any cause other than the overturned conviction.*

34 *(e) The record of the proceedings resulting in a conviction,*
35 *including a transcript of the testimony in those proceedings, may*
36 *be received in evidence.*

37 *(f) Any other provision of law setting forth a procedure for the*
38 *suspension or revocation of a license issued by the board shall not*
39 *apply to proceedings conducted pursuant to this section.*

1 SEC. 34. Section 1947.4 is added to the Business and
2 Professions Code, to read:

3 1947.4. (a) Except as otherwise provided, any proposed
4 decision or decision issued in accordance with the procedures set
5 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, that contains any
7 finding of fact that the licensee engaged in any act of sexual contact
8 with a patient, as defined in subdivision (c) of Section 729, or any
9 finding that the licensee has committed a sex offense, shall contain
10 an order revoking the license. The proposed decision or decision
11 shall not contain any order staying the revocation of the licensee.

12 (b) As used in this section, the term sex offense shall mean any
13 of the following:

14 (1) Any offense for which registration is required by Section
15 290 of the Penal Code or a finding that a person committed such
16 an act.

17 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
18 or 647(a) or (d) of the Penal Code or a finding that a person
19 committed such act.

20 (3) Any attempt to commit any of the offenses specified in this
21 section.

22 (4) Any offense committed or attempted in any other state or
23 against the laws of the United States which, if committed or
24 attempted in this state, would have been punishable as one or more
25 of the offenses specified in this section.

26 SEC. 35. Section 1947.5 is added to the Business and
27 Professions Code, to read:

28 1947.5. (a) Except as otherwise provided, with regard to an
29 individual who is required to register as a sex offender pursuant
30 to Section 290 of the Penal Code, or the equivalent in another
31 state or territory, under military law, or under federal law, the
32 board shall be subject to the following requirements:

33 (1) The board shall deny an application by the individual for
34 licensure in accordance with the procedures set forth in Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (2) If the individual is licensed under this chapter, the board
38 shall promptly revoke the license of the individual in accordance
39 with the procedures set forth in Chapter 5 (commencing with
40 Section 11500) of Part 1 of Division 3 of Title 2 of the Government

1 *Code. The board shall not stay the revocation and place the license*
2 *on probation.*

3 *(3) The board shall not reinstate or reissue the individual's*
4 *license. The board shall not issue a stay of license denial nor place*
5 *the license on probation.*

6 *(b) This section shall not apply to any of the following:*

7 *(1) An individual who has been relieved under Section 290.5 of*
8 *the Penal Code of his or her duty to register as a sex offender, or*
9 *whose duty to register has otherwise been formally terminated*
10 *under California law or the law of the jurisdiction that requires*
11 *his or her registration as a sex offender.*

12 *(2) An individual who is required to register as a sex offender*
13 *pursuant to Section 290 of the Penal Code solely because of a*
14 *misdemeanor conviction under Section 314 of the Penal Code.*
15 *However, nothing in this paragraph shall prohibit the board from*
16 *exercising its discretion to discipline a licensee under any other*
17 *provision of state law based upon the licensee's conviction under*
18 *Section 314 of the Penal Code.*

19 *(3) Any administrative adjudication proceeding under Chapter*
20 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
21 *2 of the Government Code that is fully adjudicated prior to January*
22 *1, 2008. A petition for reinstatement of a revoked or surrendered*
23 *license shall be considered a new proceeding for purposes of this*
24 *paragraph, and the prohibition against reinstating a license to an*
25 *individual who is required to register as a sex offender shall be*
26 *applicable.*

27 *SEC. 36. Section 1947.6 is added to the Business and*
28 *Professions Code, to read:*

29 *1947.6. (a) Notwithstanding any other provision of law, any*
30 *employer of a licensee shall report to the board the suspension or*
31 *termination for cause, or any resignation in lieu of suspension or*
32 *termination for cause, of any licensee in its employ within 15*
33 *business days. The report shall not be made until after the*
34 *conclusion of the review process specified in Section 52.3 of Title*
35 *2 of the California Code of Regulations and Skelly v. State*
36 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
37 *required reporting shall not constitute a waiver of confidentiality*
38 *of medical records. The information reported or disclosed shall*
39 *be kept confidential except as provided in subdivision (c) of Section*
40 *800 and shall not be subject to discovery in civil cases.*

1 (b) The information to be reported by the employer shall include
2 the name and license number of the licensee involved, a
3 description of the facts and circumstances of the suspension or
4 termination for cause, any resignation in lieu of suspension or
5 termination for cause, and any other relevant information deemed
6 appropriate by the employer.

7 (c) The board shall be entitled to inspect and copy the following
8 documents in the record for any suspension or termination for
9 cause, or any resignation in lieu of suspension or termination for
10 cause, resulting in action that is required to be reported pursuant
11 to this section:

12 (1) Any statement for suspension or termination of the licensee.

13 (2) Any document or exhibits relevant to the suspension or
14 termination.

15 (d) If, during the investigation by the board of the cause for the
16 termination or suspension or resignation of the licensee, it is found
17 that there has been a violation of existing state or federal law, the
18 board shall report the violation to the appropriate agency.

19 (e) For purposes of this section, “suspension or termination for
20 cause” or “resignation in lieu of suspension or termination for
21 cause” is defined as resignation, suspension, or termination from
22 employment for any of the following reasons:

23 (1) Use of controlled substances or alcohol to the extent that it
24 impairs the licensee’s ability to safely practice.

25 (2) Unlawful sale of a controlled substance or other prescription
26 items.

27 (3) Patient or client abuse, neglect, physical harm, or sexual
28 contact with a patient or client.

29 (4) Gross negligence or incompetence.

30 (5) Theft from a patient or client, any other employee, or the
31 employer.

32 (f) As used in this section, the following definitions apply:

33 (1) “Gross negligence” means a substantial departure from the
34 standard of care, which, under similar circumstances, would have
35 ordinarily been exercised by a competent licensee, and which has
36 or could have resulted in harm to the consumer. An exercise of so
37 slight a degree of care as to justify the belief that there was a
38 conscious disregard or indifference for the health, safety, or
39 welfare of the consumer shall be considered a substantial departure
40 from the standard of care.

1 (2) “Incompetence” means the lack of possession of, and the
2 failure to exercise that degree of learning, skill, care, and
3 experience ordinarily possessed by, a responsible licensee.

4 (3) “Willful” means a knowing and intentional violation of a
5 known legal duty.

6 (g) (1) Willful failure of an employer to make a report required
7 by this section is punishable by an administrative fine not to exceed
8 one hundred thousand dollars (\$100,000) per violation.

9 (2) Any failure of an employer, other than willful failure, to
10 make a report required by this section is punishable by an
11 administrative fine not to exceed fifty thousand dollars (\$50,000).

12 (h) The board shall investigate the circumstances underlying
13 any report received pursuant to this section within 30 days to
14 determine if an interim suspension order or temporary restraining
15 order should be issued. The board shall otherwise provide timely
16 disposition of the reports received pursuant to this section.

17 (i) The board shall send to the licentiate a copy of the report
18 along with the reasons for the filing of the report and notice
19 advising the licentiate of his or her right to submit additional
20 statements or other information to the board.

21 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
22 incur any civil penalty as a result of making any report required
23 by this article.

24 (k) No report is required under this section where a report of
25 the action taken is already required under Section 805.

26 SEC. 37. Section 1947.7 is added to the Business and
27 Professions Code, to read:

28 1947.7. Unless otherwise provided, on or after July 1, 2013,
29 the board shall post on its Internet Web site the following
30 information, including the name and license number, in its
31 possession, custody, or control regarding every licensee for which
32 the board licenses:

33 (a) With regard to the status of every license, whether or not
34 the licensee or former licensee is in good standing, subject to a
35 temporary restraining order, subject to an interim suspension
36 order, subject to a restriction or cease practice ordered pursuant
37 to Section 23 of the Penal Code, or subject to any of the
38 enforcement actions described in Section 803.1.

39 (b) With regard to prior discipline of a licensee, whether or not
40 the licensee or former licensee has been subject to discipline by

1 the board or by the board of another state or jurisdiction, as
2 described in Section 803.1.

3 (c) Any felony conviction of a licensee reported to the board.

4 (d) All current accusations filed by the Attorney General,
5 including those accusations that are on appeal. For purposes of
6 this paragraph, “current accusation” means an accusation that
7 has not been dismissed, withdrawn, or settled, and has not been
8 finally decided upon by an administrative law judge and the board
9 unless an appeal of that decision is pending.

10 (e) Any malpractice judgment or arbitration award imposed
11 against a licensee and reported to the board.

12 (f) Any hospital disciplinary action imposed against a licensee
13 that resulted in the termination or revocation of a licensee’s
14 hospital staff privileges for a medical disciplinary cause or reason
15 pursuant to Section 805.

16 (g) Any misdemeanor conviction of a licensee that results in a
17 disciplinary action or an accusation that is not subsequently
18 withdrawn or dismissed.

19 (h) Appropriate disclaimers and explanatory statements to
20 accompany the above information, including an explanation of
21 what types of information are not disclosed. These disclaimers
22 and statements shall be developed by the board and shall be
23 adopted by regulation.

24 (i) The information provided on the Internet shall be in
25 accordance with the California Public Records Act (Chapter 3.5
26 commencing with Section 6250) of Division 7 of Title 1 of the
27 Government Code) and the Information Practices Act of 1977
28 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
29 of Division 3 of the Civil Code) and shall comply with the
30 Department of Consumer Affairs Guidelines for Access to Public
31 Records.

32 (j) Information provided on the Internet may not include
33 personal information, unless otherwise provided pursuant to this
34 chapter, including the home telephone number, date of birth, or
35 social security number. The information may not include the
36 licensee’s address, but may include the city and county of the
37 licensee’s address of record.

38 SEC. 38. Section 1947.8 is added to the Business and
39 Professions Code, to read:

1 1947.8. (a) Unless otherwise provided, if a licensee possesses
2 a license or is otherwise authorized to practice in any state other
3 than California or by any agency of the federal government and
4 that license or authority is suspended or revoked outright, the
5 California license of the licensee shall be suspended automatically
6 for the duration of the suspension or revocation, unless terminated
7 or rescinded as provided in subdivision (c). The board shall notify
8 the licensee of the license suspension and of his or her right to
9 have the issue of penalty heard as provided in this section.

10 (b) Upon its own motion or for good cause shown, the board
11 may decline to impose or may set aside the suspension when it
12 appears to be in the interest of justice to do so, with due regard
13 to maintaining the integrity of, and confidence in, the specific
14 healing art.

15 (c) The issue of penalty shall be heard by an administrative law
16 judge sitting alone or with a panel of the board, in the discretion
17 of the board. A licensee may request a hearing on the penalty and
18 that hearing shall be held within 90 days from the date of the
19 request. If the order suspending or revoking the license or authority
20 to practice is overturned on appeal, any discipline ordered
21 pursuant to this section shall automatically cease. Upon a showing
22 to the administrative law judge or panel by the licensee that the
23 out-of-state action is not a basis for discipline in California, the
24 suspension shall be rescinded. If an accusation for permanent
25 discipline is not filed within 90 days of the suspension imposed
26 pursuant to this section, the suspension shall automatically
27 terminate.

28 (d) The record of the proceedings that resulted in the suspension
29 or revocation of the licensee's out-of-state license or authority to
30 practice, including a transcript of the testimony therein, may be
31 received in evidence.

32 (e) This section shall not apply to a licensee who maintains his
33 or her primary practice in California, as evidenced by having
34 maintained a practice in this state for not less than one year
35 immediately preceding the date of suspension or revocation.
36 Nothing in this section shall preclude a licensee's license from
37 being suspended pursuant to any other provision of law.

38 (f) This section shall not apply to a licensee whose license has
39 been surrendered, whose only discipline is a medical staff
40 disciplinary action at a federal hospital and not for medical

1 *disciplinary cause or reason as that term is defined in Section 805,*
2 *or whose revocation or suspension has been stayed, even if the*
3 *licensee remains subject to terms of probation or other discipline.*

4 *(g) This section shall not apply to a suspension or revocation*
5 *imposed by a state that is based solely on the prior discipline of*
6 *the licensee by another state.*

7 *(h) The other provisions of this article setting forth a procedure*
8 *for the suspension or revocation of a licensee's license or*
9 *certificate shall not apply to summary suspensions issued pursuant*
10 *to this section. If a summary suspension has been issued pursuant*
11 *to this section, the licensee may request that the hearing on the*
12 *penalty conducted pursuant to subdivision (c) be held at the same*
13 *time as a hearing on the accusation.*

14 *(i) A board that complies with Section 2310 shall not be subject*
15 *to the requirements of this section.*

16 *SEC. 39. Section 2246 of the Business and Professions Code*
17 *is amended to read:*

18 *2246. (a) Any proposed decision or decision issued under this*
19 *article that contains any finding of fact that the licensee engaged*
20 *in any act of sexual exploitation, as described in paragraphs (3) to*
21 *(5), inclusive, of subdivision (b) of Section 729, with a patient*
22 *shall contain an order of revocation. The revocation shall not be*
23 *stayed by the administrative law judge.*

24 *(b) Except as otherwise provided, any proposed decision or*
25 *decision issued under this article in accordance with the*
26 *procedures set forth in Chapter 5 (commencing with Section 11500)*
27 *of Part 1 of Division 3 of Title 2 of the Government Code, that*
28 *contains any finding of fact that the licensee has committed a sex*
29 *offense, shall contain an order revoking the license. The proposed*
30 *decision or decision shall not contain any order staying the*
31 *revocation of the licensee.*

32 *(c) As used in this section, the term sex offense shall mean any*
33 *of the following:*

34 *(1) Any offense for which registration is required by Section*
35 *290 of the Penal Code or a finding that a person committed such*
36 *an act.*

37 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
38 *or 647(a) or (d) of the Penal Code or a finding that a person*
39 *committed such an act.*

1 (3) Any attempt to commit any of the offenses specified in this
2 section.

3 (4) Any offense committed or attempted in any other state or
4 against the laws of the United States which, if committed or
5 attempted in this state, would have been punishable as one or more
6 of the offenses specified in this section.

7 SEC. 40. Section 2533.5 is added to the Business and
8 Professions Code, to read:

9 2533.5. (a) The board may delegate to its executive officer the
10 authority to adopt a proposed default decision where an
11 administrative action to revoke a license has been filed and the
12 licensee has failed to file a notice of defense or to appear at the
13 hearing and a proposed default decision revoking the license has
14 been issued.

15 (b) The board may delegate to its executive officer the authority
16 to adopt a proposed settlement agreement where an administrative
17 action to revoke a license has been filed by the board and the
18 licensee has agreed to the revocation or surrender of his or her
19 license.

20 (c) The executive officer shall, at scheduled board meetings,
21 report to the board the number of proposed default decisions or
22 proposed settlement agreements adopted pursuant to this section.

23 SEC. 41. Section 2533.6 is added to the Business and
24 Professions Code, to read:

25 2533.6. (a) Notwithstanding Section 11415.60 of the
26 Government Code, the board may enter into a settlement with a
27 licensee or applicant in lieu of the issuance of an accusation or
28 statement of issues against that licensee or applicant, as applicable.

29 (b) The settlement shall include language identifying the factual
30 basis for the action being taken and a list of the statutes or
31 regulations violated.

32 (c) A person who enters a settlement pursuant to this section is
33 not precluded from filing a petition, in the timeframe permitted by
34 law, to modify the terms of the settlement or petition for early
35 termination of probation, if probation is part of the settlement.

36 (d) Any settlement against a licensee executed pursuant to this
37 section shall be considered discipline and a public record and
38 shall be posted on the applicable board's Internet Web site. Any
39 settlement against an applicant executed pursuant to this section

1 *shall be considered a public record and shall be posted on the*
2 *applicable board's Internet Web site.*

3 *(e) The executive officer shall, at scheduled board meetings,*
4 *report to the board the number of proposed settlement agreements*
5 *adopted pursuant to this section.*

6 *SEC. 42. Section 2533.7 is added to the Business and*
7 *Professions Code, to read:*

8 *2533.7. (a) The license of a licensee shall be suspended*
9 *automatically during any time that the licensee is incarcerated*
10 *after conviction of a felony, regardless of whether the conviction*
11 *has been appealed. The board shall, immediately upon receipt of*
12 *the certified copy of the record of conviction, determine whether*
13 *the license of the licensee has been automatically suspended by*
14 *virtue of his or her incarceration, and if so, the duration of that*
15 *suspension. The board shall notify the licensee in writing of the*
16 *license suspension and of his or her right to elect to have the issue*
17 *of penalty heard as provided in subdivision (d).*

18 *(b) Upon receipt of the certified copy of the record of conviction,*
19 *if after a hearing before an administrative law judge from the*
20 *Office of Administrative Hearings it is determined that the felony*
21 *for which the licensee was convicted was substantially related to*
22 *the qualifications, functions, or duties of a licensee, the board*
23 *shall suspend the license until the time for appeal has elapsed, if*
24 *no appeal has been taken, or until the judgment of conviction has*
25 *been affirmed on appeal or has otherwise become final, and until*
26 *further order of the board.*

27 *(c) Notwithstanding subdivision (b), a conviction of a charge*
28 *of violating any federal statute or regulation or any statute or*
29 *regulation of this state, regulating dangerous drugs or controlled*
30 *substances, or a conviction of Section 187, 261, 262, or 288 of the*
31 *Penal Code, shall be conclusively presumed to be substantially*
32 *related to the qualifications, functions, or duties of a licensee and*
33 *no hearing shall be held on this issue. However, upon its own*
34 *motion or for good cause shown, the board may decline to impose*
35 *or may set aside the suspension when it appears to be in the interest*
36 *of justice to do so, with due regard to maintaining the integrity of,*
37 *and confidence in, the practice regulated by the board.*

38 *(d) (1) Discipline may be ordered against a licensee in*
39 *accordance with the statutes and regulations of the board when*
40 *the time for appeal has elapsed, the judgment of conviction has*

1 *been affirmed on appeal, or an order granting probation is made*
2 *suspending the imposition of sentence, irrespective of a subsequent*
3 *order under Section 1203.4 of the Penal Code allowing the person*
4 *to withdraw his or her plea of guilty and to enter a plea of not*
5 *guilty, setting aside the verdict of guilty, or dismissing the*
6 *accusation, complaint, information, or indictment.*

7 *(2) The issue of penalty shall be heard by an administrative law*
8 *judge from the Office of Administrative Hearings. The hearing*
9 *shall not be had until the judgment of conviction has become final*
10 *or, irrespective of a subsequent order under Section 1203.4 of the*
11 *Penal Code, an order granting probation has been made*
12 *suspending the imposition of sentence; except that a licensee may,*
13 *at his or her option, elect to have the issue of penalty decided*
14 *before those time periods have elapsed. Where the licensee so*
15 *elects, the issue of penalty shall be heard in the manner described*
16 *in subdivision (b) at the hearing to determine whether the*
17 *conviction was substantially related to the qualifications, functions,*
18 *or duties of a licensee. If the conviction of a licensee who has made*
19 *this election is overturned on appeal, any discipline ordered*
20 *pursuant to this section shall automatically cease. Nothing in this*
21 *subdivision shall prohibit the board from pursuing disciplinary*
22 *action based on any cause other than the overturned conviction.*

23 *(e) The record of the proceedings resulting in a conviction,*
24 *including a transcript of the testimony in those proceedings, may*
25 *be received in evidence.*

26 *(f) Any other provision of law setting forth a procedure for the*
27 *suspension or revocation of a license issued by the board shall not*
28 *apply to proceedings conducted pursuant to this section.*

29 *SEC. 43. Section 2533.8 is added to the Business and*
30 *Professions Code, to read:*

31 *2533.8. (a) Except as otherwise provided, any proposed*
32 *decision or decision issued in accordance with the procedures set*
33 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
34 *Division 3 of Title 2 of the Government Code, that contains any*
35 *finding of fact that the licensee engaged in any act of sexual contact*
36 *with a patient, as defined in subdivision (c) of Section 729, or any*
37 *finding that the licensee has committed a sex offense, shall contain*
38 *an order revoking the license. The proposed decision shall not*
39 *contain any order staying the revocation of the licensee.*

1 (b) As used in this section, the term sex offense shall mean any
2 of the following:

3 (1) Any offense for which registration is required by Section
4 290 of the Penal Code or a finding that a person committed such
5 an act.

6 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
7 or 647(a) or (d) of the Penal Code or a finding that a person
8 committed such act.

9 (3) Any attempt to commit any of the offenses specified in this
10 section.

11 (4) Any offense committed or attempted in any other state or
12 against the laws of the United States which, if committed or
13 attempted in this state, would have been punishable as one or more
14 of the offenses specified in this Section.

15 SEC. 44. Section 2533.9 is added to the Business and
16 Professions Code, to read:

17 2533.9. (a) Except as otherwise provided, with regard to an
18 individual who is required to register as a sex offender pursuant
19 to Section 290 of the Penal Code, or the equivalent in another
20 state or territory, under military law, or under federal law, the
21 board shall be subject to the following requirements:

22 (1) The board shall deny an application by the individual for
23 licensure in accordance with the procedures set forth in Chapter
24 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code.

26 (2) If the individual is licensed under this chapter, the board
27 shall promptly revoke the license of the individual in accordance
28 with the procedures set forth in Chapter 5 (commencing with
29 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
30 Code. The board shall not stay the revocation and place the license
31 on probation.

32 (3) The board shall not reinstate or reissue the individual's
33 license. The board shall not issue a stay of license denial nor place
34 the license on probation.

35 (b) This section shall not apply to any of the following:

36 (1) An individual who has been relieved under Section 290.5 of
37 the Penal Code of his or her duty to register as a sex offender, or
38 whose duty to register has otherwise been formally terminated
39 under California law or the law of the jurisdiction that requires
40 his or her registration as a sex offender.

1 (2) *An individual who is required to register as a sex offender*
2 *pursuant to Section 290 of the Penal Code solely because of a*
3 *misdemeanor conviction under Section 314 of the Penal Code.*
4 *However, nothing in this paragraph shall prohibit the board from*
5 *exercising its discretion to discipline a licensee under any other*
6 *provision of state law based upon the licensee's conviction under*
7 *Section 314 of the Penal Code.*

8 (3) *Any administrative adjudication proceeding under Chapter*
9 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
10 *2 of the Government Code that is fully adjudicated prior to January*
11 *1, 2008. A petition for reinstatement of a revoked or surrendered*
12 *license shall be considered a new proceeding for purposes of this*
13 *paragraph, and the prohibition against reinstating a license to an*
14 *individual who is required to register as a sex offender shall be*
15 *applicable.*

16 SEC. 45. *Section 2533.10 is added to the Business and*
17 *Professions Code, to read:*

18 2533.10. (a) *Notwithstanding any other provision of law*
19 *making a communication between a licensee and his or her patients*
20 *a privileged communication, those provisions shall not apply to*
21 *investigations or proceedings conducted by the board. Members*
22 *of the board, deputies, employees, agents, the office of the Attorney*
23 *General, and representatives of the board shall keep in confidence*
24 *during the course of investigations the names of any patients whose*
25 *records are reviewed and may not disclose or reveal those names,*
26 *except as is necessary during the course of an investigation, unless*
27 *and until proceedings are instituted. The authority under this*
28 *subdivision to examine records of patients in the office of a licensee*
29 *is limited to records of patients who have complained to the board*
30 *about that licensee.*

31 (b) *Notwithstanding any other provision of law, the Attorney*
32 *General and his or her investigative agents, and the board and its*
33 *investigators and representatives may inquire into any alleged*
34 *violation of the laws under the jurisdiction of the board or any*
35 *other federal or state law, regulation, or rule relevant to the*
36 *practice regulated by the board, whichever is applicable, and may*
37 *inspect documents relevant to those investigations in accordance*
38 *with the following procedures:*

1 (1) Any document relevant to an investigation may be inspected,
2 and copies may be obtained, where a patient provides written
3 authorization.

4 (2) Any document relevant to the business operations of a
5 licensee, and not involving medical records attributable to
6 identifiable patients, may be inspected and copied where relevant
7 to an investigation of a licensee.

8 (c) In all cases where documents are inspected or copies of
9 those documents are received, their acquisition or review shall be
10 arranged so as not to unnecessarily disrupt the medical and
11 business operations of the licensee or of the facility where the
12 records are kept or used.

13 (d) Where certified documents are lawfully requested from
14 licensees in accordance with this section by the Attorney General
15 or his or her agents or deputies, or investigators of any board, the
16 documents shall be provided within 10 business days of receipt of
17 the request, unless the licensee is unable to provide the certified
18 documents within this time period for good cause, including, but
19 not limited to, physical inability to access the records in the time
20 allowed due to illness or travel. Failure to produce requested
21 certified documents or copies thereof, after being informed of the
22 required deadline, shall constitute unprofessional conduct. A board
23 may use its authority to cite and fine a licensee for any violation
24 of this section. This remedy is in addition to any other authority
25 of the board to sanction a licensee for a delay in producing
26 requested records.

27 (e) Searches conducted of the office or medical facility of any
28 licensee shall not interfere with the recordkeeping format or
29 preservation needs of any licensee necessary for the lawful care
30 of patients.

31 (f) The licensee shall cooperate with the board in furnishing
32 information or assistance as may be required, including, but not
33 limited to, participation in an interview with investigators or
34 representatives of the board.

35 (g) This section shall not apply to a licensee who does not have
36 access to, and control over, certified medical records or other
37 types of documents that belong to or are controlled by a health
38 facility or clinic.

39 SEC. 46. Section 2533.11 is added to the Business and
40 Professions Code, to read:

2533.11. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect

1 *to licensure, including suspension or revocation of the license or*
2 *certificate.*

3 *(d) A failure or refusal of a licensee to comply with a court*
4 *order, issued in the enforcement of a subpoena, mandating the*
5 *release of records to the healing arts board constitutes*
6 *unprofessional conduct and is grounds for suspension or revocation*
7 *of his or her license.*

8 *(e) Imposition of the civil penalties authorized by this section*
9 *shall be in accordance with the Administrative Procedure Act*
10 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
11 *2 of the Government Code). Any civil penalties paid to, or received*
12 *by, the board pursuant to this section shall be deposited into the*
13 *fund administered by the board.*

14 *(f) For purposes of this section, “certified medical records”*
15 *means a copy of the patient’s medical records authenticated by*
16 *the licensee or health care facility, as appropriate, on a form*
17 *prescribed by the licensee’s board.*

18 *(g) For purposes of this section, a “health care facility” means*
19 *a clinic or health facility licensed or exempt from licensure*
20 *pursuant to Division 2 (commencing with Section 1200) of the*
21 *Health and Safety Code.*

22 *(h) If a board complies with Section 1684.1, 2225.5, or 2969,*
23 *that board shall not be subject to the requirements of this section.*

24 *(i) This section shall not apply to a licensee who does not have*
25 *access to, or control over, certified medical records or other types*
26 *of documents that belong to or are controlled by a health facility*
27 *or clinic.*

28 *SEC. 47. Section 2533.12 is added to the Business and*
29 *Professions Code, to read:*

30 *2533.12. (a) Notwithstanding any other provision of law, any*
31 *employer of a licensee shall report to the board the suspension or*
32 *termination for cause, or any resignation in lieu of suspension or*
33 *termination for cause, of any licensee in its employ within 15*
34 *business days. The report shall not be made until after the*
35 *conclusion of the review process specified in Section 52.3 of Title*
36 *2 of the California Code of Regulations and Skelly v. State*
37 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
38 *required reporting shall not constitute a waiver of confidentiality*
39 *of medical records. The information reported or disclosed shall*

1 *be kept confidential except as provided in subdivision (c) of Section*
2 *800 and shall not be subject to discovery in civil cases.*

3 *(b) The information to be reported by the employer shall include*
4 *the name and license number of the licensee involved, a*
5 *description of the facts and circumstances of the suspension or*
6 *termination for cause, any resignation in lieu of suspension or*
7 *termination for cause, and any other relevant information deemed*
8 *appropriate by the employer.*

9 *(c) The board shall be entitled to inspect and copy the following*
10 *documents in the record for any suspension or termination for*
11 *cause, or any resignation in lieu of suspension or termination for*
12 *cause, resulting in action that is required to be reported pursuant*
13 *to this section:*

14 *(1) Any statement for suspension or termination of the licensee.*

15 *(2) Any document or exhibits relevant to the suspension or*
16 *termination.*

17 *(d) If, during the investigation by the board of the cause for the*
18 *termination or suspension or resignation of the licensee, it is found*
19 *that there has been a violation of existing state or federal law, the*
20 *board shall report the violation to the appropriate agency.*

21 *(e) For purposes of this section, “suspension or termination for*
22 *cause” or “resignation in lieu of suspension or termination for*
23 *cause” is defined as resignation, suspension, or termination from*
24 *employment for any of the following reasons:*

25 *(1) Use of controlled substances or alcohol to the extent that it*
26 *impairs the licensee’s ability to safely practice.*

27 *(2) Unlawful sale of a controlled substance or other prescription*
28 *items.*

29 *(3) Patient or client abuse, neglect, physical harm, or sexual*
30 *contact with a patient or client.*

31 *(4) Gross negligence or incompetence.*

32 *(5) Theft from a patient or client, any other employee, or the*
33 *employer.*

34 *(f) As used in this section, the following definitions apply:*

35 *(1) “Gross negligence” means a substantial departure from the*
36 *standard of care, which, under similar circumstances, would have*
37 *ordinarily been exercised by a competent licensee, and which has*
38 *or could have resulted in harm to the consumer. An exercise of so*
39 *slight a degree of care as to justify the belief that there was a*
40 *conscious disregard or indifference for the health, safety, or*

1 *welfare of the consumer shall be considered a substantial departure*
2 *from the standard of care.*

3 (2) *“Incompetence” means the lack of possession of, and the*
4 *failure to exercise that degree of learning, skill, care, and*
5 *experience ordinarily possessed by, a responsible licensee.*

6 (3) *“Willful” means a knowing and intentional violation of a*
7 *known legal duty.*

8 (g) (1) *Willful failure of an employer to make a report required*
9 *by this section is punishable by an administrative fine not to exceed*
10 *one hundred thousand dollars (\$100,000) per violation.*

11 (2) *Any failure of an employer, other than willful failure, to*
12 *make a report required by this section is punishable by an*
13 *administrative fine not to exceed fifty thousand dollars (\$50,000).*

14 (h) *The board shall investigate the circumstances underlying*
15 *any report received pursuant to this section within 30 days to*
16 *determine if an interim suspension order or temporary restraining*
17 *order should be issued. The board shall otherwise provide timely*
18 *disposition of the reports received pursuant to this section.*

19 (i) *The board shall send to the licentiate a copy of the report*
20 *along with the reasons for the filing of the report and notice*
21 *advising the licentiate of his or her right to submit additional*
22 *statements or other information to the board.*

23 (j) *Pursuant to Section 43.8 of the Civil Code, no person shall*
24 *incur any civil penalty as a result of making any report required*
25 *by this article.*

26 (k) *No report is required under this section where a report of*
27 *the action taken is already required under Section 805.*

28 SEC. 48. *Section 2533.13 is added to the Business and*
29 *Professions Code, to read:*

30 2533.13. *Unless otherwise provided, on or after July 1, 2013,*
31 *the board shall post on its Internet Web site the following*
32 *information including the name and license number in its*
33 *possession, custody, or control regarding every licensee for which*
34 *the board licenses:*

35 (a) *With regard to the status of every license, whether or not*
36 *the licensee or former licensee is in good standing, subject to a*
37 *temporary restraining order, subject to an interim suspension*
38 *order, subject to a restriction or cease practice ordered pursuant*
39 *to Section 23 of the Penal Code, or subject to any of the*
40 *enforcement actions described in Section 803.1.*

1 (b) With regard to prior discipline of a licensee, whether or not
2 the licensee or former licensee has been subject to discipline by
3 the board or by the board of another state or jurisdiction, as
4 described in Section 803.1.

5 (c) Any felony conviction of a licensee reported to the board.

6 (d) All current accusations filed by the Attorney General,
7 including those accusations that are on appeal. For purposes of
8 this paragraph, “current accusation” means an accusation that
9 has not been dismissed, withdrawn, or settled, and has not been
10 finally decided upon by an administrative law judge and the board
11 unless an appeal of that decision is pending.

12 (e) Any malpractice judgment or arbitration award imposed
13 against a licensee and reported to the board.

14 (f) Any hospital disciplinary action imposed against a licensee
15 that resulted in the termination or revocation of a licensee’s
16 hospital staff privileges for a medical disciplinary cause or reason
17 pursuant to Section 2533.11 or 805.

18 (g) Any misdemeanor conviction of a licensee that results in a
19 disciplinary action or an accusation that is not subsequently
20 withdrawn or dismissed.

21 (h) Appropriate disclaimers and explanatory statements to
22 accompany the above information, including an explanation of
23 what types of information are not disclosed. These disclaimers
24 and statements shall be developed by the board and shall be
25 adopted by regulation.

26 (i) The information provided on the Internet shall be in
27 accordance with the California Public Records Act (Chapter 3.5
28 (commencing with Section 6250) of Division 7 of Title 1 of the
29 Government Code) and the Information Practices Act of 1977
30 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
31 of Division 3 of the Civil Code) and shall comply with the
32 Department of Consumer Affairs Guidelines for Access to Public
33 Records.

34 (j) Information provided on the Internet may not include
35 personal information, unless otherwise provided pursuant to this
36 chapter, including the home telephone number, date of birth, or
37 social security number. The information may not include the
38 licensee’s address, but may include the city and county of the
39 licensee’s address of record.

1 SEC. 49. Section 2533.14 is added to the Business and
2 Professions Code, to read:

3 2533.14. (a) Unless otherwise provided, if a licensee possesses
4 a license or is otherwise authorized to practice in any state other
5 than California or by any agency of the federal government and
6 that license or authority is suspended or revoked outright, the
7 California license of the licensee shall be suspended automatically
8 for the duration of the suspension or revocation, unless terminated
9 or rescinded as provided in subdivision (c). The healing arts board
10 shall notify the licensee of the license suspension and of his or her
11 right to have the issue of penalty heard as provided in this section.

12 (b) Upon its own motion or for good cause shown, the board
13 may decline to impose or may set aside the suspension when it
14 appears to be in the interest of justice to do so, with due regard
15 to maintaining the integrity of, and confidence in, the specific
16 healing art.

17 (c) The issue of penalty shall be heard by an administrative law
18 judge sitting alone or with a panel of the board, in the discretion
19 of the board. A licensee may request a hearing on the penalty and
20 that hearing shall be held within 90 days from the date of the
21 request. If the order suspending or revoking the license or authority
22 to practice is overturned on appeal, any discipline ordered
23 pursuant to this section shall automatically cease. Upon a showing
24 to the administrative law judge or panel by the licensee that the
25 out-of-state action is not a basis for discipline in California, the
26 suspension shall be rescinded. If an accusation for permanent
27 discipline is not filed within 90 days of the suspension imposed
28 pursuant to this section, the suspension shall automatically
29 terminate.

30 (d) The record of the proceedings that resulted in the suspension
31 or revocation of the licensee's out-of-state license or authority to
32 practice, including a transcript of the testimony therein, may be
33 received in evidence.

34 (e) This section shall not apply to a licensee who maintains his
35 or her primary practice in California, as evidenced by having
36 maintained a practice in this state for not less than one year
37 immediately preceding the date of suspension or revocation.
38 Nothing in this section shall preclude a licensee's license from
39 being suspended pursuant to any other provision of law.

1 (f) *This section shall not apply to a licensee whose license has*
2 *been surrendered, whose only discipline is a medical staff*
3 *disciplinary action at a federal hospital and not for medical*
4 *disciplinary cause or reason as that term is defined in Section 805,*
5 *or whose revocation or suspension has been stayed, even if the*
6 *licensee remains subject to terms of probation or other discipline.*

7 (g) *This section shall not apply to a suspension or revocation*
8 *imposed by a state that is based solely on the prior discipline of*
9 *the licensee by another state.*

10 (h) *The other provisions of this article setting forth a procedure*
11 *for the suspension or revocation of a licensee's license or*
12 *certificate shall not apply to summary suspensions issued pursuant*
13 *to this section. If a summary suspension has been issued pursuant*
14 *to this section, the licensee may request that the hearing on the*
15 *penalty conducted pursuant to subdivision (c) be held at the same*
16 *time as a hearing on the accusation.*

17 (i) *A board that complies with Section 2310 shall not be subject*
18 *to the requirements of this section.*

19 SEC. 50. *Section 2570.38 is added to the Business and*
20 *Professions Code, to read:*

21 2570.38. (a) *The board may delegate to its executive officer*
22 *the authority to adopt a proposed default decision where an*
23 *administrative action to revoke a license has been filed and the*
24 *licensee has failed to file a notice of defense or to appear at the*
25 *hearing and a proposed default decision revoking the license has*
26 *been issued.*

27 (b) *The board may delegate to its executive officer the authority*
28 *to adopt a proposed settlement agreement where an administrative*
29 *action to revoke a license has been filed by the board and the*
30 *licensee has agreed to the revocation or surrender of his or her*
31 *license.*

32 (c) *The executive officer shall, at scheduled board meetings,*
33 *report to the board the number of proposed default decisions or*
34 *proposed settlement agreements adopted pursuant to this section.*

35 SEC. 51. *Section 2570.39 is added to the Business and*
36 *Professions Code, to read:*

37 2570.39. (a) *Notwithstanding Section 11415.60 of the*
38 *Government Code, the board may enter into a settlement with a*
39 *licensee or applicant in lieu of the issuance of an accusation or*
40 *statement of issues against that licensee or applicant, as applicable.*

1 ***(b) The settlement shall include language identifying the factual***
2 ***basis for the action being taken and a list of the statutes or***
3 ***regulations violated.***

4 ***(c) A person who enters a settlement pursuant to this section is***
5 ***not precluded from filing a petition, in the timeframe permitted by***
6 ***law, to modify the terms of the settlement or petition for early***
7 ***termination of probation, if probation is part of the settlement.***

8 ***(d) Any settlement against a licensee executed pursuant to this***
9 ***section shall be considered discipline and a public record and***
10 ***shall be posted on the applicable board's Internet Web site. Any***
11 ***settlement against an applicant executed pursuant to this section***
12 ***shall be considered a public record and shall be posted on the***
13 ***applicable board's Internet Web site.***

14 ***(e) The executive officer shall, at scheduled board meetings,***
15 ***report to the board the number of proposed settlement agreements***
16 ***adopted pursuant to this section.***

17 ***SEC. 52. Section 2570.40 is added to the Business and***
18 ***Professions Code, to read:***

19 ***2570.40. (a) The license of a licensee shall be suspended***
20 ***automatically during any time that the licensee is incarcerated***
21 ***after conviction of a felony, regardless of whether the conviction***
22 ***has been appealed. The board shall, immediately upon receipt of***
23 ***the certified copy of the record of conviction, determine whether***
24 ***the license of the licensee has been automatically suspended by***
25 ***virtue of his or her incarceration, and if so, the duration of that***
26 ***suspension. The board shall notify the licensee in writing of the***
27 ***license suspension and of his or her right to elect to have the issue***
28 ***of penalty heard as provided in subdivision (d).***

29 ***(b) Upon receipt of the certified copy of the record of conviction,***
30 ***if after a hearing before an administrative law judge from the***
31 ***Office of Administrative Hearings it is determined that the felony***
32 ***for which the licensee was convicted was substantially related to***
33 ***the qualifications, functions, or duties of a licensee, the board***
34 ***shall suspend the license until the time for appeal has elapsed, if***
35 ***no appeal has been taken, or until the judgment of conviction has***
36 ***been affirmed on appeal or has otherwise become final, and until***
37 ***further order of the board.***

38 ***(c) Notwithstanding subdivision (b), a conviction of a charge***
39 ***of violating any federal statute or regulation or any statute or***
40 ***regulation of this state, regulating dangerous drugs or controlled***

1 substances, or a conviction of Section 187, 261, 262, or 288 of the
2 Penal Code, shall be conclusively presumed to be substantially
3 related to the qualifications, functions, or duties of a licensee and
4 no hearing shall be held on this issue. However, upon its own
5 motion or for good cause shown, the board may decline to impose
6 or may set aside the suspension when it appears to be in the interest
7 of justice to do so, with due regard to maintaining the integrity of,
8 and confidence in, the practice regulated by the board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the statutes and regulations of the board when
11 the time for appeal has elapsed, the judgment of conviction has
12 been affirmed on appeal, or an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent
14 order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

18 (2) The issue of penalty shall be heard by an administrative law
19 judge from the Office of Administrative Hearings. The hearing
20 shall not be had until the judgment of conviction has become final
21 or, irrespective of a subsequent order under Section 1203.4 of the
22 Penal Code, an order granting probation has been made
23 suspending the imposition of sentence; except that a licensee may,
24 at his or her option, elect to have the issue of penalty decided
25 before those time periods have elapsed. Where the licensee so
26 elects, the issue of penalty shall be heard in the manner described
27 in subdivision (b) at the hearing to determine whether the
28 conviction was substantially related to the qualifications, functions,
29 or duties of a licensee. If the conviction of a licensee who has made
30 this election is overturned on appeal, any discipline ordered
31 pursuant to this section shall automatically cease. Nothing in this
32 subdivision shall prohibit the board from pursuing disciplinary
33 action based on any cause other than the overturned conviction.

34 (e) The record of the proceedings resulting in a conviction,
35 including a transcript of the testimony in those proceedings, may
36 be received in evidence.

37 (f) Any other provision of law setting forth a procedure for the
38 suspension or revocation of a license issued by the board shall not
39 apply to proceedings conducted pursuant to this section.

1 *SEC. 53. Section 2570.41 is added to the Business and*
2 *Professions Code, to read:*

3 2570.41. (a) *Except as otherwise provided, any proposed*
4 *decision or decision issued in accordance with the procedures set*
5 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
6 *Division 3 of Title 2 of the Government Code, that contains any*
7 *finding of fact that the licensee engaged in any act of sexual contact*
8 *with a patient, as defined in subdivision (c) of Section 729, or any*
9 *finding that the licensee has committed a sex offense, shall contain*
10 *an order revoking the license. The proposed decision shall not*
11 *contain any order staying the revocation of the licensee.*

12 (b) *As used in this section, the term sex offense shall mean any*
13 *of the following:*

14 (1) *Any offense for which registration is required by Section*
15 *290 of the Penal Code or a finding that a person committed such*
16 *an act.*

17 (2) *Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
18 *or 647(a) or (d) of the Penal Code or a finding that a person*
19 *committed such an act.*

20 (3) *Any attempt to commit any of the offenses specified in this*
21 *section.*

22 (4) *Any offense committed or attempted in any other state or*
23 *against the laws of the United States which, if committed or*
24 *attempted in this state, would have been punishable as one or more*
25 *of the offenses specified in this section.*

26 *SEC. 54. Section 2570.42 is added to the Business and*
27 *Professions Code, to read:*

28 2570.42. (a) *Except as otherwise provided, with regard to an*
29 *individual who is required to register as a sex offender pursuant*
30 *to Section 290 of the Penal Code, or the equivalent in another*
31 *state or territory, under military law, or under federal law, the*
32 *board shall be subject to the following requirements:*

33 (1) *The board shall deny an application by the individual for*
34 *licensure in accordance with the procedures set forth in Chapter*
35 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
36 *2 of the Government Code.*

37 (2) *If the individual is licensed under this chapter, the board*
38 *shall promptly revoke the license of the individual in accordance*
39 *with the procedures set forth in Chapter 5 (commencing with*
40 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*

1 *Code. The board shall not stay the revocation and place the license*
2 *on probation.*

3 *(3) The board shall not reinstate or reissue the individual's*
4 *license. The board shall not issue a stay of license denial nor place*
5 *the license on probation.*

6 *(b) This section shall not apply to any of the following:*

7 *(1) An individual who has been relieved under Section 290.5 of*
8 *the Penal Code of his or her duty to register as a sex offender, or*
9 *whose duty to register has otherwise been formally terminated*
10 *under California law or the law of the jurisdiction that requires*
11 *his or her registration as a sex offender.*

12 *(2) An individual who is required to register as a sex offender*
13 *pursuant to Section 290 of the Penal Code solely because of a*
14 *misdemeanor conviction under Section 314 of the Penal Code.*
15 *However, nothing in this paragraph shall prohibit the board from*
16 *exercising its discretion to discipline a licensee under any other*
17 *provision of state law based upon the licensee's conviction under*
18 *Section 314 of the Penal Code.*

19 *(3) Any administrative adjudication proceeding under Chapter*
20 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
21 *2 of the Government Code that is fully adjudicated prior to January*
22 *1, 2008. A petition for reinstatement of a revoked or surrendered*
23 *license shall be considered a new proceeding for purposes of this*
24 *paragraph, and the prohibition against reinstating a license to an*
25 *individual who is required to register as a sex offender shall be*
26 *applicable.*

27 *SEC. 55. Section 2570.43 is added to the Business and*
28 *Professions Code, to read:*

29 *2570.43. (a) Notwithstanding any other provision of law*
30 *making a communication between a licensee and his or her patients*
31 *a privileged communication, those provisions shall not apply to*
32 *investigations or proceedings conducted by the board. Members*
33 *of the board, deputies, employees, agents, the office of the Attorney*
34 *General, and representatives of the board shall keep in confidence*
35 *during the course of investigations the names of any patients whose*
36 *records are reviewed and may not disclose or reveal those names,*
37 *except as is necessary during the course of an investigation, unless*
38 *and until proceedings are instituted. The authority under this*
39 *subdivision to examine records of patients in the office of a licensee*

1 *is limited to records of patients who have complained to the board*
2 *about that licensee.*

3 *(b) Notwithstanding any other provision of law, the Attorney*
4 *General and his or her investigative agents, and the board and its*
5 *investigators and representatives may inquire into any alleged*
6 *violation of the laws under the jurisdiction of the board or any*
7 *other federal or state law, regulation, or rule relevant to the*
8 *practice regulated by the board, whichever is applicable, and may*
9 *inspect documents relevant to those investigations in accordance*
10 *with the following procedures:*

11 *(1) Any document relevant to an investigation may be inspected,*
12 *and copies may be obtained, where a patient provides written*
13 *authorization.*

14 *(2) Any document relevant to the business operations of a*
15 *licensee, and not involving medical records attributable to*
16 *identifiable patients, may be inspected and copied where relevant*
17 *to an investigation of a licensee.*

18 *(c) In all cases where documents are inspected or copies of*
19 *those documents are received, their acquisition or review shall be*
20 *arranged so as not to unnecessarily disrupt the medical and*
21 *business operations of the licensee or of the facility where the*
22 *records are kept or used.*

23 *(d) Where certified documents are lawfully requested from*
24 *licensees in accordance with this section by the Attorney General*
25 *or his or her agents or deputies, or investigators of any board, the*
26 *documents shall be provided within 10 business days of receipt of*
27 *the request, unless the licensee is unable to provide the certified*
28 *documents within this time period for good cause, including, but*
29 *not limited to, physical inability to access the records in the time*
30 *allowed due to illness or travel. Failure to produce requested*
31 *certified documents or copies thereof, after being informed of the*
32 *required deadline, shall constitute unprofessional conduct. A board*
33 *may use its authority to cite and fine a licensee for any violation*
34 *of this section. This remedy is in addition to any other authority*
35 *of the healing arts board to sanction a licensee for a delay in*
36 *producing requested records.*

37 *(e) Searches conducted of the office or medical facility of any*
38 *licensee shall not interfere with the recordkeeping format or*
39 *preservation needs of any licensee necessary for the lawful care*
40 *of patients.*

1 (f) The licensee shall cooperate with the board in furnishing
2 information or assistance as may be required, including, but not
3 limited to, participation in an interview with investigators or
4 representatives of the healing arts board.

5 (g) This section shall not apply to a licensee who does not have
6 access to, and control over, certified medical records or other
7 types of documents that belong to or are controlled by a health
8 facility or clinic.

9 SEC. 56. Section 2570.44 is added to the Business and
10 Professions Code, to read:

11 2570.44. (a) (1) Notwithstanding any other provision of law,
12 a licensee who fails or refuses to comply with a request for the
13 certified medical records of a patient that is accompanied by that
14 patient's written authorization for release of records to a board
15 together with a notice citing this section and describing the
16 penalties for failure to comply with this section shall be required
17 to pay to the board a civil penalty of up to one thousand dollars
18 (\$1,000) per day for each day that the documents have not been
19 produced after the 15th day, up to ten thousand dollars (\$10,000),
20 unless the licensee is unable to provide the documents within this
21 time period for good cause.

22 (2) A health care facility shall comply with a request for the
23 certified medical records of a patient that is accompanied by that
24 patient's written authorization for release of records to a board
25 together with a notice citing this section and describing the
26 penalties for failure to comply with this section. Failure to provide
27 the authorizing patient's certified medical records to the board
28 within 15 days of receiving the request, authorization, and notice
29 shall subject the health care facility to a civil penalty, payable to
30 the board, of up to one thousand dollars (\$1,000) per day for each
31 day that the documents have not been produced after the 15th day,
32 up to ten thousand dollars (\$10,000), unless the health care facility
33 is unable to provide the documents within this time period for good
34 cause. This paragraph shall not require health care facilities to
35 assist the board in obtaining the patient's authorization. The board
36 shall pay the reasonable costs of copying the certified medical
37 records, but shall not be required to make that payment prior to
38 the production of the medical records.

39 (b) (1) A licensee who fails or refuses to comply with a court
40 order, issued in the enforcement of a subpoena, mandating the

1 *release of records to the board, shall pay to the board a civil*
2 *penalty of up to one thousand dollars (\$1,000) per day for each*
3 *day that the documents have not been produced after the date by*
4 *which the court order requires the documents to be produced, up*
5 *to ten thousand dollars (\$10,000), unless it is determined that the*
6 *order is unlawful or invalid. Any statute of limitations applicable*
7 *to the filing of an accusation by the board shall be tolled during*
8 *the period the licensee is out of compliance with the court order*
9 *and during any related appeals.*

10 (2) *Any licensee who fails or refuses to comply with a court*
11 *order, issued in the enforcement of a subpoena, mandating the*
12 *release of records to a board is guilty of a misdemeanor punishable*
13 *by a fine payable to the board not to exceed five thousand dollars*
14 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
15 *it is not paid by the next succeeding renewal date. Any statute of*
16 *limitations applicable to the filing of an accusation by the board*
17 *shall be tolled during the period the licensee is out of compliance*
18 *with the court order and during any related appeals.*

19 (3) *A health care facility that fails or refuses to comply with a*
20 *court order, issued in the enforcement of a subpoena, mandating*
21 *the release of patient records to the board, that is accompanied*
22 *by a notice citing this section and describing the penalties for*
23 *failure to comply with this section, shall pay to the board a civil*
24 *penalty of up to one thousand dollars (\$1,000) per day for each*
25 *day that the documents have not been produced, up to ten thousand*
26 *dollars (\$10,000), after the date by which the court order requires*
27 *the documents to be produced, unless it is determined that the*
28 *order is unlawful or invalid. Any statute of limitations applicable*
29 *to the filing of an accusation by the board against a licensee shall*
30 *be tolled during the period the health care facility is out of*
31 *compliance with the court order and during any related appeals.*

32 (4) *Any health care facility that fails or refuses to comply with*
33 *a court order, issued in the enforcement of a subpoena, mandating*
34 *the release of records to the board is guilty of a misdemeanor*
35 *punishable by a fine payable to the board not to exceed five*
36 *thousand dollars (\$5,000). Any statute of limitations applicable*
37 *to the filing of an accusation by the healing arts board against a*
38 *licensee shall be tolled during the period the health care facility*
39 *is out of compliance with the court order and during any related*
40 *appeals.*

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, “certified medical records” means a copy of the patient’s medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee’s board.

(g) For purposes of this section, a “health care facility” means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 57. Section 2570.45 is added to the Business and Professions Code, to read:

2570.45. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or

1 *termination for cause, of any licensee in its employ within 15*
2 *business days. The report shall not be made until after the*
3 *conclusion of the review process specified in Section 52.3 of Title*
4 *2 of the California Code of Regulations and Skelly v. State*
5 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
6 *required reporting shall not constitute a waiver of confidentiality*
7 *of medical records. The information reported or disclosed shall*
8 *be kept confidential except as provided in subdivision (c) of Section*
9 *800 and shall not be subject to discovery in civil cases.*

10 *(b) The information to be reported by the employer shall include*
11 *the name and license number of the licensee involved, a*
12 *description of the facts and circumstances of the suspension or*
13 *termination for cause, any resignation in lieu of suspension or*
14 *termination for cause, and any other relevant information deemed*
15 *appropriate by the employer.*

16 *(c) The board shall be entitled to inspect and copy the following*
17 *documents in the record for any suspension or termination for*
18 *cause, or any resignation in lieu of suspension or termination for*
19 *cause, resulting in action that is required to be reported pursuant*
20 *to this section:*

21 *(1) Any statement for suspension or termination of the licensee.*

22 *(2) Any document or exhibits relevant to the suspension or*
23 *termination.*

24 *(d) If, during the investigation by the board of the cause for the*
25 *termination or suspension or resignation of the licensee, it is found*
26 *that there has been a violation of existing state or federal law, the*
27 *board shall report the violation to the appropriate agency.*

28 *(e) For purposes of this section, "suspension or termination for*
29 *cause" or "resignation in lieu of suspension or termination for*
30 *cause" is defined as resignation, suspension, or termination from*
31 *employment for any of the following reasons:*

32 *(1) Use of controlled substances or alcohol to the extent that it*
33 *impairs the licensee's ability to safely practice.*

34 *(2) Unlawful sale of a controlled substance or other prescription*
35 *items.*

36 *(3) Patient or client abuse, neglect, physical harm, or sexual*
37 *contact with a patient or client.*

38 *(4) Gross negligence or incompetence.*

39 *(5) Theft from a patient or client, any other employee, or the*
40 *employer.*

1 (f) As used in this section, the following definitions apply:

2 (1) “Gross negligence” means a substantial departure from the
3 standard of care, which, under similar circumstances, would have
4 ordinarily been exercised by a competent licensee, and which has
5 or could have resulted in harm to the consumer. An exercise of so
6 slight a degree of care as to justify the belief that there was a
7 conscious disregard or indifference for the health, safety, or
8 welfare of the consumer shall be considered a substantial departure
9 from the standard of care.

10 (2) “Incompetence” means the lack of possession of, and the
11 failure to exercise that degree of learning, skill, care, and
12 experience ordinarily possessed by, a responsible licensee.

13 (3) “Willful” means a knowing and intentional violation of a
14 known legal duty.

15 (g) (1) Willful failure of an employer to make a report required
16 by this section is punishable by an administrative fine not to exceed
17 one hundred thousand dollars (\$100,000) per violation.

18 (2) Any failure of an employer, other than willful failure, to
19 make a report required by this section is punishable by an
20 administrative fine not to exceed fifty thousand dollars (\$50,000).

21 (h) The board shall investigate the circumstances underlying
22 any report received pursuant to this section within 30 days to
23 determine if an interim suspension order or temporary restraining
24 order should be issued. The board shall otherwise provide timely
25 disposition of the reports received pursuant to this section.

26 (i) The board shall send to the licentiate a copy of the report
27 along with the reasons for the filing of the report and notice
28 advising the licentiate of his or her right to submit additional
29 statements or other information to the board.

30 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
31 incur any civil penalty as a result of making any report required
32 by this article.

33 (k) No report is required under this section where a report of
34 the action taken is already required under Section 805.

35 SEC. 58. Section 2570.46 is added to the Business and
36 Professions Code, to read:

37 2570.46. Unless otherwise provided, on or after July 1, 2013,
38 the board shall post on its Internet Web site the following
39 information, including the name and license number, in its

1 *possession, custody, or control regarding every licensee for which*
2 *the board licenses:*

3 *(a) With regard to the status of every license, whether or not*
4 *the licensee or former licensee is in good standing, subject to a*
5 *temporary restraining order, subject to an interim suspension*
6 *order, subject to a restriction or cease practice ordered pursuant*
7 *to Section 23 of the Penal Code, or subject to any of the*
8 *enforcement actions described in Section 803.1.*

9 *(b) With regard to prior discipline of a licensee, whether or not*
10 *the licensee or former licensee has been subject to discipline by*
11 *the board or by the board of another state or jurisdiction, as*
12 *described in Section 803.1.*

13 *(c) Any felony conviction of a licensee reported to the board.*

14 *(d) All current accusations filed by the Attorney General,*
15 *including those accusations that are on appeal. For purposes of*
16 *this paragraph, “current accusation” means an accusation that*
17 *has not been dismissed, withdrawn, or settled, and has not been*
18 *finally decided upon by an administrative law judge and the board*
19 *unless an appeal of that decision is pending.*

20 *(e) Any malpractice judgment or arbitration award imposed*
21 *against a licensee and reported to the healing arts board.*

22 *(f) Any hospital disciplinary action imposed against a licensee*
23 *that resulted in the termination or revocation of a licensee’s*
24 *hospital staff privileges for a medical disciplinary cause or reason*
25 *pursuant to Section 2570.44 or 805.*

26 *(g) Any misdemeanor conviction of a licensee that results in a*
27 *disciplinary action or an accusation that is not subsequently*
28 *withdrawn or dismissed.*

29 *(h) Appropriate disclaimers and explanatory statements to*
30 *accompany the above information, including an explanation of*
31 *what types of information are not disclosed. These disclaimers*
32 *and statements shall be developed by the board and shall be*
33 *adopted by regulation.*

34 *(i) The information provided on the Internet shall be in*
35 *accordance with the California Public Records Act (Chapter 3.5*
36 *(commencing with Section 6250) of Division 7 of Title 1 of the*
37 *Government Code) and the Information Practices Act of 1977*
38 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
39 *of Division 3 of the Civil Code) and shall comply with the*

1 *Department of Consumer Affairs Guidelines for Access to Public*
2 *Records.*

3 *(j) Information provided on the Internet may not include*
4 *personal information, unless otherwise provided pursuant to this*
5 *chapter, including the home telephone number, date of birth, or*
6 *social security number. The information may not include the*
7 *licensee's address, but may include the city and county of the*
8 *licensee's address of record.*

9 *SEC. 59. Section 2570.47 is added to the Business and*
10 *Professions Code, to read:*

11 *2570.47. (a) Unless otherwise provided, if a licensee possesses*
12 *a license or is otherwise authorized to practice in any state other*
13 *than California or by any agency of the federal government and*
14 *that license or authority is suspended or revoked outright, the*
15 *California license of the licensee shall be suspended automatically*
16 *for the duration of the suspension or revocation, unless terminated*
17 *or rescinded as provided in subdivision (c). The board shall notify*
18 *the licensee of the license suspension and of his or her right to*
19 *have the issue of penalty heard as provided in this section.*

20 *(b) Upon its own motion or for good cause shown, the board*
21 *may decline to impose or may set aside the suspension when it*
22 *appears to be in the interest of justice to do so, with due regard*
23 *to maintaining the integrity of, and confidence in, the specific*
24 *healing art.*

25 *(c) The issue of penalty shall be heard by an administrative law*
26 *judge sitting alone or with a panel of the board, in the discretion*
27 *of the board. A licensee may request a hearing on the penalty and*
28 *that hearing shall be held within 90 days from the date of the*
29 *request. If the order suspending or revoking the license or authority*
30 *to practice is overturned on appeal, any discipline ordered*
31 *pursuant to this section shall automatically cease. Upon a showing*
32 *to the administrative law judge or panel by the licensee that the*
33 *out-of-state action is not a basis for discipline in California, the*
34 *suspension shall be rescinded. If an accusation for permanent*
35 *discipline is not filed within 90 days of the suspension imposed*
36 *pursuant to this section, the suspension shall automatically*
37 *terminate.*

38 *(d) The record of the proceedings that resulted in the suspension*
39 *or revocation of the licensee's out-of-state license or authority to*

1 *practice, including a transcript of the testimony therein, may be*
2 *received in evidence.*

3 *(e) This section shall not apply to a licensee who maintains his*
4 *or her primary practice in California, as evidenced by having*
5 *maintained a practice in this state for not less than one year*
6 *immediately preceding the date of suspension or revocation.*
7 *Nothing in this section shall preclude a licensee's license from*
8 *being suspended pursuant to any other provision of law.*

9 *(f) This section shall not apply to a licensee whose license has*
10 *been surrendered, whose only discipline is a medical staff*
11 *disciplinary action at a federal hospital and not for medical*
12 *disciplinary cause or reason as that term is defined in Section 805,*
13 *or whose revocation or suspension has been stayed, even if the*
14 *licensee remains subject to terms of probation or other discipline.*

15 *(g) This section shall not apply to a suspension or revocation*
16 *imposed by a state that is based solely on the prior discipline of*
17 *the licensee by another state.*

18 *(h) The other provisions of this article setting forth a procedure*
19 *for the suspension or revocation of a licensee's license or*
20 *certificate shall not apply to summary suspensions issued pursuant*
21 *to this section. If a summary suspension has been issued pursuant*
22 *to this section, the licensee may request that the hearing on the*
23 *penalty conducted pursuant to subdivision (c) be held at the same*
24 *time as a hearing on the accusation.*

25 *(i) A board that complies with Section 2310 shall not be subject*
26 *to the requirements of this section.*

27 *SEC. 60. Section 2608.5 of the Business and Professions Code*
28 *is repealed.*

29 ~~2608.5. Each member of the board, or any licensed physical~~
30 ~~therapist appointed by the board, may inspect, or require reports~~
31 ~~from, a general or specialized hospital or any other facility~~
32 ~~providing physical therapy care, treatment or services and the~~
33 ~~physical therapy staff thereof, with respect to the physical therapy~~
34 ~~care, treatment, services, or facilities provided therein, and may~~
35 ~~inspect physical therapy patient records with respect to the care,~~
36 ~~treatment, services, or facilities. The authority to make inspections~~
37 ~~and to require reports as provided by this section shall not be~~
38 ~~delegated by a member of the board to any person other than a~~
39 ~~physical therapist and shall be subject to the restrictions against~~
40 ~~disclosure described in Section 2263.~~

1 *SEC. 61. Section 2660.5 of the Business and Professions Code*
2 *is repealed.*

3 ~~2660.5. The board shall deny a physical therapist license or~~
4 ~~physical therapist assistant approval to an applicant who is required~~
5 ~~to register pursuant to Section 290 of the Penal Code. This section~~
6 ~~does not apply to an applicant who is required to register as a sex~~
7 ~~offender pursuant to Section 290 of the Penal Code solely because~~
8 ~~of a misdemeanor conviction under Section 314 of the Penal Code.~~

9 *SEC. 62. Section 2661.8 is added to the Business and*
10 *Professions Code, to read:*

11 2661.8. (a) *The board may delegate to its executive officer the*
12 *authority to adopt a proposed default decision where an*
13 *administrative action to revoke a license has been filed and the*
14 *licensee has failed to file a notice of defense or to appear at the*
15 *hearing and a proposed default decision revoking the license has*
16 *been issued.*

17 (b) *The board may delegate to its executive officer the authority*
18 *to adopt a proposed settlement agreement where an administrative*
19 *action to revoke a license has been filed by the board and the*
20 *licensee has agreed to the revocation or surrender of his or her*
21 *license.*

22 (c) *The executive officer shall, at scheduled board meetings,*
23 *report to the board the number of proposed default decisions or*
24 *proposed settlement agreements adopted pursuant to this section.*

25 *SEC. 63. Section 2661.9 is added to the Business and*
26 *Professions Code, to read:*

27 2661.9. (a) *Notwithstanding Section 11415.60 of the*
28 *Government Code, the board may enter into a settlement with a*
29 *licensee or applicant in lieu of the issuance of an accusation or*
30 *statement of issues against that licensee or applicant, as applicable.*

31 (b) *The settlement shall include language identifying the factual*
32 *basis for the action being taken and a list of the statutes or*
33 *regulations violated.*

34 (c) *A person who enters a settlement pursuant to this section is*
35 *not precluded from filing a petition, in the timeframe permitted by*
36 *law, to modify the terms of the settlement or petition for early*
37 *termination of probation, if probation is part of the settlement.*

38 (d) *Any settlement against a licensee executed pursuant to this*
39 *section shall be considered discipline and a public record and*
40 *shall be posted on the applicable board's Internet Web site. Any*

1 *settlement against an applicant executed pursuant to this section*
2 *shall be considered a public record and shall be posted on the*
3 *applicable board's Internet Web site.*

4 *(e) The executive officer shall, at scheduled board meetings,*
5 *report to the board the number of proposed settlement agreements*
6 *adopted pursuant to this section.*

7 *SEC. 64. Section 2661.10 is added to the Business and*
8 *Professions Code, to read:*

9 *2661.10. (a) The license of a licensee shall be suspended*
10 *automatically during any time that the licensee is incarcerated*
11 *after conviction of a felony, regardless of whether the conviction*
12 *has been appealed. The board shall, immediately upon receipt of*
13 *the certified copy of the record of conviction, determine whether*
14 *the license of the licensee has been automatically suspended by*
15 *virtue of his or her incarceration, and if so, the duration of that*
16 *suspension. The board shall notify the licensee in writing of the*
17 *license suspension and of his or her right to elect to have the issue*
18 *of penalty heard as provided in subdivision (d).*

19 *(b) Upon receipt of the certified copy of the record of conviction,*
20 *if after a hearing before an administrative law judge from the*
21 *Office of Administrative Hearings it is determined that the felony*
22 *for which the licensee was convicted was substantially related to*
23 *the qualifications, functions, or duties of a licensee, the board*
24 *shall suspend the license until the time for appeal has elapsed, if*
25 *no appeal has been taken, or until the judgment of conviction has*
26 *been affirmed on appeal or has otherwise become final, and until*
27 *further order of the board.*

28 *(c) Notwithstanding subdivision (b), a conviction of a charge*
29 *of violating any federal statute or regulation or any statute or*
30 *regulation of this state, regulating dangerous drugs or controlled*
31 *substances, or a conviction of Section 187, 261, 262, or 288 of the*
32 *Penal Code, shall be conclusively presumed to be substantially*
33 *related to the qualifications, functions, or duties of a licensee and*
34 *no hearing shall be held on this issue. However, upon its own*
35 *motion or for good cause shown, the board may decline to impose*
36 *or may set aside the suspension when it appears to be in the interest*
37 *of justice to do so, with due regard to maintaining the integrity of,*
38 *and confidence in, the practice regulated by the board.*

39 *(d) (1) Discipline may be ordered against a licensee in*
40 *accordance with the statutes and regulations of the board when*

1 *the time for appeal has elapsed, the judgment of conviction has*
2 *been affirmed on appeal, or an order granting probation is made*
3 *suspending the imposition of sentence, irrespective of a subsequent*
4 *order under Section 1203.4 of the Penal Code allowing the person*
5 *to withdraw his or her plea of guilty and to enter a plea of not*
6 *guilty, setting aside the verdict of guilty, or dismissing the*
7 *accusation, complaint, information, or indictment.*

8 *(2) The issue of penalty shall be heard by an administrative law*
9 *judge from the Office of Administrative Hearings. The hearing*
10 *shall not be had until the judgment of conviction has become final*
11 *or, irrespective of a subsequent order under Section 1203.4 of the*
12 *Penal Code, an order granting probation has been made*
13 *suspending the imposition of sentence; except that a licensee may,*
14 *at his or her option, elect to have the issue of penalty decided*
15 *before those time periods have elapsed. Where the licensee so*
16 *elects, the issue of penalty shall be heard in the manner described*
17 *in subdivision (b) at the hearing to determine whether the*
18 *conviction was substantially related to the qualifications, functions,*
19 *or duties of a licensee. If the conviction of a licensee who has made*
20 *this election is overturned on appeal, any discipline ordered*
21 *pursuant to this section shall automatically cease. Nothing in this*
22 *subdivision shall prohibit the board from pursuing disciplinary*
23 *action based on any cause other than the overturned conviction.*

24 *(e) The record of the proceedings resulting in a conviction,*
25 *including a transcript of the testimony in those proceedings, may*
26 *be received in evidence.*

27 *(f) Any other provision of law setting forth a procedure for the*
28 *suspension or revocation of a license issued by the board shall not*
29 *apply to proceedings conducted pursuant to this section.*

30 *SEC. 65. Section 2661.11 is added to the Business and*
31 *Professions Code, to read:*

32 *2661.11. (a) Except as otherwise provided, any proposed*
33 *decision or decision issued in accordance with the procedures set*
34 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
35 *Division 3 of Title 2 of the Government Code, that contains any*
36 *finding of fact that the licensee engaged in any act of sexual contact*
37 *with a patient, as defined in subdivision (c) of Section 729, or any*
38 *finding that the licensee has committed a sex offense, shall contain*
39 *an order revoking the license. The proposed decision shall not*
40 *contain any order staying the revocation of the licensee.*

1 ***(b) As used in this section, the term sex offense shall mean any***
2 ***of the following:***

3 ***(1) Any offense for which registration is required by Section***
4 ***290 of the Penal Code or a finding that a person committed such***
5 ***an act.***

6 ***(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,***
7 ***or 647(a) or (d) of the Penal Code or a finding that a person***
8 ***committed such an act.***

9 ***(3) Any attempt to commit any of the offenses specified in this***
10 ***section.***

11 ***(4) Any offense committed or attempted in any other state or***
12 ***against the laws of the United States which, if committed or***
13 ***attempted in this state, would have been punishable as one or more***
14 ***of the offenses specified in this section.***

15 ***SEC. 66. Section 2661.12 is added to the Business and***
16 ***Professions Code, to read:***

17 ***2661.12. (a) Except as otherwise provided, with regard to an***
18 ***individual who is required to register as a sex offender pursuant***
19 ***to Section 290 of the Penal Code, or the equivalent in another***
20 ***state or territory, under military law, or under federal law, the***
21 ***board shall be subject to the following requirements:***

22 ***(1) The board shall deny an application by the individual for***
23 ***licensure in accordance with the procedures set forth in Chapter***
24 ***5 (commencing with Section 11500) of Part 1 of Division 3 of Title***
25 ***2 of the Government Code.***

26 ***(2) If the individual is licensed under this chapter, the board***
27 ***shall promptly revoke the license of the individual in accordance***
28 ***with the procedures set forth in Chapter 5 (commencing with***
29 ***Section 11500) of Part 1 of Division 3 of Title 2 of the Government***
30 ***Code. The board shall not stay the revocation and place the license***
31 ***on probation.***

32 ***(3) The board shall not reinstate or reissue the individual's***
33 ***license. The board shall not issue a stay of license denial nor place***
34 ***the license on probation.***

35 ***(b) This section shall not apply to any of the following:***

36 ***(1) An individual who has been relieved under Section 290.5 of***
37 ***the Penal Code of his or her duty to register as a sex offender, or***
38 ***whose duty to register has otherwise been formally terminated***
39 ***under California law or the law of the jurisdiction that requires***
40 ***his or her registration as a sex offender.***

1 (2) *An individual who is required to register as a sex offender*
2 *pursuant to Section 290 of the Penal Code solely because of a*
3 *misdemeanor conviction under Section 314 of the Penal Code.*
4 *However, nothing in this paragraph shall prohibit the board from*
5 *exercising its discretion to discipline a licensee under any other*
6 *provision of state law based upon the licensee's conviction under*
7 *Section 314 of the Penal Code.*

8 (3) *Any administrative adjudication proceeding under Chapter*
9 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
10 *2 of the Government Code that is fully adjudicated prior to January*
11 *1, 2008. A petition for reinstatement of a revoked or surrendered*
12 *license shall be considered a new proceeding for purposes of this*
13 *paragraph, and the prohibition against reinstating a license to an*
14 *individual who is required to register as a sex offender shall be*
15 *applicable.*

16 SEC. 67. *Section 2661.13 is added to the Business and*
17 *Professions Code, to read:*

18 2661.13. (a) *Notwithstanding any other provision of law*
19 *making a communication between a licensee and his or her patients*
20 *a privileged communication, those provisions shall not apply to*
21 *investigations or proceedings conducted by the board. Members*
22 *of the board, deputies, employees, agents, the office of the Attorney*
23 *General, and representatives of the board shall keep in confidence*
24 *during the course of investigations the names of any patients whose*
25 *records are reviewed and may not disclose or reveal those names,*
26 *except as is necessary during the course of an investigation, unless*
27 *and until proceedings are instituted. The authority under this*
28 *subdivision to examine records of patients in the office of a licensee*
29 *is limited to records of patients who have complained to the board*
30 *about that licensee.*

31 (b) *Notwithstanding any other provision of law, the Attorney*
32 *General and his or her investigative agents, and the board and its*
33 *investigators and representatives may inquire into any alleged*
34 *violation of the laws under the jurisdiction of the board or any*
35 *other federal or state law, regulation, or rule relevant to the*
36 *practice regulated by the board, whichever is applicable, and may*
37 *inspect documents relevant to those investigations in accordance*
38 *with the following procedures:*

1 (1) Any document relevant to an investigation may be inspected,
2 and copies may be obtained, where a patient provides written
3 authorization.

4 (2) Any document relevant to the business operations of a
5 licensee, and not involving medical records attributable to
6 identifiable patients, may be inspected and copied where relevant
7 to an investigation of a licensee.

8 (c) In all cases where documents are inspected or copies of
9 those documents are received, their acquisition or review shall be
10 arranged so as not to unnecessarily disrupt the medical and
11 business operations of the licensee or of the facility where the
12 records are kept or used.

13 (d) Where certified documents are lawfully requested from
14 licensees in accordance with this section by the Attorney General
15 or his or her agents or deputies, or investigators of any board, the
16 documents shall be provided within 10 business days of receipt of
17 the request, unless the licensee is unable to provide the certified
18 documents within this time period for good cause, including, but
19 not limited to, physical inability to access the records in the time
20 allowed due to illness or travel. Failure to produce requested
21 certified documents or copies thereof, after being informed of the
22 required deadline, shall constitute unprofessional conduct. A board
23 may use its authority to cite and fine a licensee for any violation
24 of this section. This remedy is in addition to any other authority
25 of the board to sanction a licensee for a delay in producing
26 requested records.

27 (e) Searches conducted of the office or medical facility of any
28 licensee shall not interfere with the recordkeeping format or
29 preservation needs of any licensee necessary for the lawful care
30 of patients.

31 (f) The licensee shall cooperate with the board in furnishing
32 information or assistance as may be required, including, but not
33 limited to, participation in an interview with investigators or
34 representatives of the board.

35 (g) This section shall not apply to a licensee who does not have
36 access to, and control over, certified medical records or other
37 types of documents that belong to or are controlled by a health
38 facility or clinic.

39 SEC. 68. Section 2661.14 is added to the Business and
40 Professions Code, to read:

1 2661.14. (a) (1) Notwithstanding any other provision of law,
2 a licensee who fails or refuses to comply with a request for the
3 certified medical records of a patient that is accompanied by that
4 patient's written authorization for release of records to a board
5 together with a notice citing this section and describing the
6 penalties for failure to comply with this section shall be required
7 to pay to the board a civil penalty of up to one thousand dollars
8 (\$1,000) per day for each day that the documents have not been
9 produced after the 15th day, up to ten thousand dollars (\$10,000),
10 unless the licensee is unable to provide the documents within this
11 time period for good cause.

12 (2) A health care facility shall comply with a request for the
13 certified medical records of a patient that is accompanied by that
14 patient's written authorization for release of records to a board
15 together with a notice citing this section and describing the
16 penalties for failure to comply with this section. Failure to provide
17 the authorizing patient's certified medical records to the board
18 within 15 days of receiving the request, authorization, and notice
19 shall subject the health care facility to a civil penalty, payable to
20 the board, of up to one thousand dollars (\$1,000) per day for each
21 day that the documents have not been produced after the 15th day,
22 up to ten thousand dollars (\$10,000), unless the health care facility
23 is unable to provide the documents within this time period for good
24 cause. This paragraph shall not require health care facilities to
25 assist the board in obtaining the patient's authorization. The board
26 shall pay the reasonable costs of copying the certified medical
27 records, but shall not be required to make that payment prior to
28 the production of the medical records.

29 (b) (1) A licensee who fails or refuses to comply with a court
30 order, issued in the enforcement of a subpoena, mandating the
31 release of records to the board, shall pay to the board a civil
32 penalty of up to one thousand dollars (\$1,000) per day for each
33 day that the documents have not been produced after the date by
34 which the court order requires the documents to be produced, up
35 to ten thousand dollars (\$10,000), unless it is determined that the
36 order is unlawful or invalid. Any statute of limitations applicable
37 to the filing of an accusation by the board shall be tolled during
38 the period the licensee is out of compliance with the court order
39 and during any related appeals.

1 (2) Any licensee who fails or refuses to comply with a court
2 order, issued in the enforcement of a subpoena, mandating the
3 release of records to a board is guilty of a misdemeanor punishable
4 by a fine payable to the board not to exceed five thousand dollars
5 (\$5,000). The fine shall be added to the licensee's renewal fee if
6 it is not paid by the next succeeding renewal date. Any statute of
7 limitations applicable to the filing of an accusation by the board
8 shall be tolled during the period the licensee is out of compliance
9 with the court order and during any related appeals.

10 (3) A health care facility that fails or refuses to comply with a
11 court order, issued in the enforcement of a subpoena, mandating
12 the release of patient records to the board, that is accompanied
13 by a notice citing this section and describing the penalties for
14 failure to comply with this section, shall pay to the board a civil
15 penalty of up to one thousand dollars (\$1,000) per day for each
16 day that the documents have not been produced, up to ten thousand
17 dollars (\$10,000), after the date by which the court order requires
18 the documents to be produced, unless it is determined that the
19 order is unlawful or invalid. Any statute of limitations applicable
20 to the filing of an accusation by the board against a licensee shall
21 be tolled during the period the health care facility is out of
22 compliance with the court order and during any related appeals.

23 (4) Any health care facility that fails or refuses to comply with
24 a court order, issued in the enforcement of a subpoena, mandating
25 the release of records to the board is guilty of a misdemeanor
26 punishable by a fine payable to the board not to exceed five
27 thousand dollars (\$5,000). Any statute of limitations applicable
28 to the filing of an accusation by the board against a licensee shall
29 be tolled during the period the health care facility is out of
30 compliance with the court order and during any related appeals.

31 (c) Multiple acts by a licensee in violation of subdivision (b)
32 shall be punishable by a fine not to exceed five thousand dollars
33 (\$5,000) or by imprisonment in a county jail not exceeding six
34 months, or by both that fine and imprisonment. Multiple acts by
35 a health care facility in violation of subdivision (b) shall be
36 punishable by a fine not to exceed five thousand dollars (\$5,000),
37 shall be reported to the State Department of Public Health, and
38 shall be considered as grounds for disciplinary action with respect
39 to licensure, including suspension or revocation of the license or
40 certificate.

1 (d) A failure or refusal of a licensee to comply with a court
2 order, issued in the enforcement of a subpoena, mandating the
3 release of records to the board constitutes unprofessional conduct
4 and is grounds for suspension or revocation of his or her license.

5 (e) Imposition of the civil penalties authorized by this section
6 shall be in accordance with the Administrative Procedure Act
7 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
8 2 of the Government Code). Any civil penalties paid to, or received
9 by, the board pursuant to this section shall be deposited into the
10 fund administered by the board.

11 (f) For purposes of this section, “certified medical records”
12 means a copy of the patient’s medical records authenticated by
13 the licensee or health care facility, as appropriate, on a form
14 prescribed by the licensee’s board.

15 (g) For purposes of this section, a “health care facility” means
16 a clinic or health facility licensed or exempt from licensure
17 pursuant to Division 2 (commencing with Section 1200) of the
18 Health and Safety Code.

19 (h) If a board complies with Section 1684.1, 2225.5, or 2969,
20 that board shall not be subject to the requirements of this section.

21 (i) This section shall not apply to a licensee who does not have
22 access to, or control over, certified medical records or other types
23 of documents that belong to or are controlled by a health facility
24 or clinic.

25 SEC. 69. Section 2661.15 is added to the Business and
26 Professions Code, to read:

27 2661.15. (a) Notwithstanding any other provision of law, any
28 employer of a licensee shall report to the board the suspension or
29 termination for cause, or any resignation in lieu of suspension or
30 termination for cause, of any licensee in its employ within 15
31 business days. The report shall not be made until after the
32 conclusion of the review process specified in Section 52.3 of Title
33 2 of the California Code of Regulations and *Skelly v. State*
34 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
35 required reporting shall not constitute a waiver of confidentiality
36 of medical records. The information reported or disclosed shall
37 be kept confidential except as provided in subdivision (c) of Section
38 800 and shall not be subject to discovery in civil cases.

39 (b) The information to be reported by the employer shall include
40 the name and license number of the licensee involved, a

1 *description of the facts and circumstances of the suspension or*
2 *termination for cause, any resignation in lieu of suspension or*
3 *termination for cause, and any other relevant information deemed*
4 *appropriate by the employer.*

5 *(c) The board shall be entitled to inspect and copy the following*
6 *documents in the record for any suspension or termination for*
7 *cause, or any resignation in lieu of suspension or termination for*
8 *cause, resulting in action that is required to be reported pursuant*
9 *to this section:*

10 *(1) Any statement for suspension or termination of the licensee.*

11 *(2) Any document or exhibits relevant to the suspension or*
12 *termination.*

13 *(d) If, during the investigation by the board of the cause for the*
14 *termination or suspension or resignation of the licensee, it is found*
15 *that there has been a violation of existing state or federal law, the*
16 *board shall report the violation to the appropriate agency.*

17 *(e) For purposes of this section, “suspension or termination for*
18 *cause” or “resignation in lieu of suspension or termination for*
19 *cause” is defined as resignation, suspension, or termination from*
20 *employment for any of the following reasons:*

21 *(1) Use of controlled substances or alcohol to the extent that it*
22 *impairs the licensee’s ability to safely practice.*

23 *(2) Unlawful sale of a controlled substance or other prescription*
24 *items.*

25 *(3) Patient or client abuse, neglect, physical harm, or sexual*
26 *contact with a patient or client.*

27 *(4) Gross negligence or incompetence.*

28 *(5) Theft from a patient or client, any other employee, or the*
29 *employer.*

30 *(f) As used in this section, the following definitions apply:*

31 *(1) “Gross negligence” means a substantial departure from the*
32 *standard of care, which, under similar circumstances, would have*
33 *ordinarily been exercised by a competent licensee, and which has*
34 *or could have resulted in harm to the consumer. An exercise of so*
35 *slight a degree of care as to justify the belief that there was a*
36 *conscious disregard or indifference for the health, safety, or*
37 *welfare of the consumer shall be considered a substantial departure*
38 *from the standard of care.*

1 (2) “Incompetence” means the lack of possession of, and the
2 failure to exercise that degree of learning, skill, care, and
3 experience ordinarily possessed by, a responsible licensee.

4 (3) “Willful” means a knowing and intentional violation of a
5 known legal duty.

6 (g) (1) Willful failure of an employer to make a report required
7 by this section is punishable by an administrative fine not to exceed
8 one hundred thousand dollars (\$100,000) per violation.

9 (2) Any failure of an employer, other than willful failure, to
10 make a report required by this section is punishable by an
11 administrative fine not to exceed fifty thousand dollars (\$50,000).

12 (h) The board shall investigate the circumstances underlying
13 any report received pursuant to this section within 30 days to
14 determine if an interim suspension order or temporary restraining
15 order should be issued. The board shall otherwise provide timely
16 disposition of the reports received pursuant to this section.

17 (i) The board shall send to the licentiate a copy of the report
18 along with the reasons for the filing of the report and notice
19 advising the licentiate of his or her right to submit additional
20 statements or other information to the board.

21 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
22 incur any civil penalty as a result of making any report required
23 by this article.

24 (k) No report is required under this section where a report of
25 the action taken is already required under Section 805.

26 SEC. 70. Section 2661.16 is added to the Business and
27 Professions Code, to read:

28 2661.16. Unless otherwise provided, on or after July 1, 2013,
29 the board shall post on its Internet Web site the following
30 information including the name and license number in its
31 possession, custody, or control regarding every licensee for which
32 the board licenses:

33 (a) With regard to the status of every license, whether or not
34 the licensee or former licensee is in good standing, subject to a
35 temporary restraining order, subject to an interim suspension
36 order, subject to a restriction or cease practice ordered pursuant
37 to Section 23 of the Penal Code, or subject to any of the
38 enforcement actions described in Section 803.1.

39 (b) With regard to prior discipline of a licensee, whether or not
40 the licensee or former licensee has been subject to discipline by

1 *the board or by the board of another state or jurisdiction, as*
2 *described in Section 803.1.*

3 *(c) Any felony conviction of a licensee reported to the board.*

4 *(d) All current accusations filed by the Attorney General,*
5 *including those accusations that are on appeal. For purposes of*
6 *this paragraph, “current accusation” means an accusation that*
7 *has not been dismissed, withdrawn, or settled, and has not been*
8 *finally decided upon by an administrative law judge and the board*
9 *unless an appeal of that decision is pending.*

10 *(e) Any malpractice judgment or arbitration award imposed*
11 *against a licensee and reported to the board.*

12 *(f) Any hospital disciplinary action imposed against a licensee*
13 *that resulted in the termination or revocation of a licensee’s*
14 *hospital staff privileges for a medical disciplinary cause or reason*
15 *pursuant to Section 2661.14 or 805.*

16 *(g) Any misdemeanor conviction of a licensee that results in a*
17 *disciplinary action or an accusation that is not subsequently*
18 *withdrawn or dismissed.*

19 *(h) Appropriate disclaimers and explanatory statements to*
20 *accompany the above information, including an explanation of*
21 *what types of information are not disclosed. These disclaimers*
22 *and statements shall be developed by the board and shall be*
23 *adopted by regulation.*

24 *(i) The information provided on the Internet shall be in*
25 *accordance with the California Public Records Act (Chapter 3.5*
26 *(commencing with Section 6250) of Division 7 of Title 1 of the*
27 *Government Code) and the Information Practices Act of 1977*
28 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
29 *of Division 3 of the Civil Code) and shall comply with the*
30 *Department of Consumer Affairs Guidelines for Access to Public*
31 *Records.*

32 *(j) Information provided on the Internet may not include*
33 *personal information, unless otherwise provided pursuant to this*
34 *chapter, including the home telephone number, date of birth, or*
35 *social security number. The information may not include the*
36 *licensee’s address, but may include the city and county of the*
37 *licensee’s address of record.*

38 *SEC. 71. Section 2661.17 is added to the Business and*
39 *Professions Code, to read:*

1 2661.17. (a) Unless otherwise provided, if a licensee possesses
2 a license or is otherwise authorized to practice in any state other
3 than California or by any agency of the federal government and
4 that license or authority is suspended or revoked outright, the
5 California license of the licensee shall be suspended automatically
6 for the duration of the suspension or revocation, unless terminated
7 or rescinded as provided in subdivision (c). The board shall notify
8 the licensee of the license suspension and of his or her right to
9 have the issue of penalty heard as provided in this section.

10 (b) Upon its own motion or for good cause shown, the board
11 may decline to impose or may set aside the suspension when it
12 appears to be in the interest of justice to do so, with due regard
13 to maintaining the integrity of, and confidence in, the specific
14 healing art.

15 (c) The issue of penalty shall be heard by an administrative law
16 judge sitting alone or with a panel of the board, in the discretion
17 of the board. A licensee may request a hearing on the penalty and
18 that hearing shall be held within 90 days from the date of the
19 request. If the order suspending or revoking the license or authority
20 to practice is overturned on appeal, any discipline ordered
21 pursuant to this section shall automatically cease. Upon a showing
22 to the administrative law judge or panel by the licensee that the
23 out-of-state action is not a basis for discipline in California, the
24 suspension shall be rescinded. If an accusation for permanent
25 discipline is not filed within 90 days of the suspension imposed
26 pursuant to this section, the suspension shall automatically
27 terminate.

28 (d) The record of the proceedings that resulted in the suspension
29 or revocation of the licensee's out-of-state license or authority to
30 practice, including a transcript of the testimony therein, may be
31 received in evidence.

32 (e) This section shall not apply to a licensee who maintains his
33 or her primary practice in California, as evidenced by having
34 maintained a practice in this state for not less than one year
35 immediately preceding the date of suspension or revocation.
36 Nothing in this section shall preclude a licensee's license from
37 being suspended pursuant to any other provision of law.

38 (f) This section shall not apply to a licensee whose license has
39 been surrendered, whose only discipline is a medical staff
40 disciplinary action at a federal hospital and not for medical

1 *disciplinary cause or reason as that term is defined in Section 805,*
2 *or whose revocation or suspension has been stayed, even if the*
3 *licensee remains subject to terms of probation or other discipline.*

4 *(g) This section shall not apply to a suspension or revocation*
5 *imposed by a state that is based solely on the prior discipline of*
6 *the licensee by another state.*

7 *(h) The other provisions of this article setting forth a procedure*
8 *for the suspension or revocation of a licensee's license or*
9 *certificate shall not apply to summary suspensions issued pursuant*
10 *to this section. If a summary suspension has been issued pursuant*
11 *to this section, the licensee may request that the hearing on the*
12 *penalty conducted pursuant to subdivision (c) be held at the same*
13 *time as a hearing on the accusation.*

14 *(i) A board that complies with Section 2310 shall not be subject*
15 *to the requirements of this section.*

16 *SEC. 72. Section 2766 is added to the Business and Professions*
17 *Code, to read:*

18 *2766. (a) The board may delegate to its executive officer the*
19 *authority to adopt a proposed default decision where an*
20 *administrative action to revoke a license has been filed and the*
21 *licensee has failed to file a notice of defense or to appear at the*
22 *hearing and a proposed default decision revoking the license has*
23 *been issued.*

24 *(b) The board may delegate to its executive officer the authority*
25 *to adopt a proposed settlement agreement where an administrative*
26 *action to revoke a license has been filed by the board and the*
27 *licensee has agreed to the revocation or surrender of his or her*
28 *license.*

29 *(c) The executive officer shall, at scheduled board meetings,*
30 *report to the board the number of proposed default decisions or*
31 *proposed settlement agreements adopted pursuant to this section.*

32 *SEC. 73. Section 2766.1 is added to the Business and*
33 *Professions Code, to read:*

34 *2766.1. (a) Notwithstanding Section 11415.60 of the*
35 *Government Code, the board may enter into a settlement with a*
36 *licensee or applicant in lieu of the issuance of an accusation or*
37 *statement of issues against that licensee or applicant, as applicable.*

38 *(b) The settlement shall include language identifying the factual*
39 *basis for the action being taken and a list of the statutes or*
40 *regulations violated.*

1 (c) A person who enters a settlement pursuant to this section is
2 not precluded from filing a petition, in the timeframe permitted by
3 law, to modify the terms of the settlement or petition for early
4 termination of probation, if probation is part of the settlement.

5 (d) Any settlement against a licensee executed pursuant to this
6 section shall be considered discipline and a public record and
7 shall be posted on the applicable board's Internet Web site. Any
8 settlement against an applicant executed pursuant to this section
9 shall be considered a public record and shall be posted on the
10 applicable board's Internet Web site.

11 (e) The executive officer shall, at scheduled board meetings,
12 report to the board the number of proposed settlement agreements
13 adopted pursuant to this section.

14 SEC. 74. Section 2766.2 is added to the Business and
15 Professions Code, to read:

16 2766.2. (a) The license of a licensee shall be suspended
17 automatically during any time that the licensee is incarcerated
18 after conviction of a felony, regardless of whether the conviction
19 has been appealed. The board shall, immediately upon receipt of
20 the certified copy of the record of conviction, determine whether
21 the license of the licensee has been automatically suspended by
22 virtue of his or her incarceration, and if so, the duration of that
23 suspension. The board shall notify the licensee in writing of the
24 license suspension and of his or her right to elect to have the issue
25 of penalty heard as provided in subdivision (d).

26 (b) Upon receipt of the certified copy of the record of conviction,
27 if after a hearing before an administrative law judge from the
28 Office of Administrative Hearings it is determined that the felony
29 for which the licensee was convicted was substantially related to
30 the qualifications, functions, or duties of a licensee, the board
31 shall suspend the license until the time for appeal has elapsed, if
32 no appeal has been taken, or until the judgment of conviction has
33 been affirmed on appeal or has otherwise become final, and until
34 further order of the board.

35 (c) Notwithstanding subdivision (b), a conviction of a charge
36 of violating any federal statute or regulation or any statute or
37 regulation of this state, regulating dangerous drugs or controlled
38 substances, or a conviction of Section 187, 261, 262, or 288 of the
39 Penal Code, shall be conclusively presumed to be substantially
40 related to the qualifications, functions, or duties of a licensee and

1 *no hearing shall be held on this issue. However, upon its own*
2 *motion or for good cause shown, the board may decline to impose*
3 *or may set aside the suspension when it appears to be in the interest*
4 *of justice to do so, with due regard to maintaining the integrity of,*
5 *and confidence in, the practice regulated by the board.*

6 *(d) (1) Discipline may be ordered against a licensee in*
7 *accordance with the statutes and regulations of the board when*
8 *the time for appeal has elapsed, the judgment of conviction has*
9 *been affirmed on appeal, or an order granting probation is made*
10 *suspending the imposition of sentence, irrespective of a subsequent*
11 *order under Section 1203.4 of the Penal Code allowing the person*
12 *to withdraw his or her plea of guilty and to enter a plea of not*
13 *guilty, setting aside the verdict of guilty, or dismissing the*
14 *accusation, complaint, information, or indictment.*

15 *(2) The issue of penalty shall be heard by an administrative law*
16 *judge from the Office of Administrative Hearings. The hearing*
17 *shall not be had until the judgment of conviction has become final*
18 *or, irrespective of a subsequent order under Section 1203.4 of the*
19 *Penal Code, an order granting probation has been made*
20 *suspending the imposition of sentence; except that a licensee may,*
21 *at his or her option, elect to have the issue of penalty decided*
22 *before those time periods have elapsed. Where the licensee so*
23 *elects, the issue of penalty shall be heard in the manner described*
24 *in subdivision (b) at the hearing to determine whether the*
25 *conviction was substantially related to the qualifications, functions,*
26 *or duties of a licensee. If the conviction of a licensee who has made*
27 *this election is overturned on appeal, any discipline ordered*
28 *pursuant to this section shall automatically cease. Nothing in this*
29 *subdivision shall prohibit the board from pursuing disciplinary*
30 *action based on any cause other than the overturned conviction.*

31 *(e) The record of the proceedings resulting in a conviction,*
32 *including a transcript of the testimony in those proceedings, may*
33 *be received in evidence.*

34 *(f) Any other provision of law setting forth a procedure for the*
35 *suspension or revocation of a license issued by the board shall not*
36 *apply to proceedings conducted pursuant to this section.*

37 *SEC. 75. Section 2766.3 is added to the Business and*
38 *Professions Code, to read:*

39 *2766.3. (a) Except as otherwise provided, any proposed*
40 *decision or decision issued in accordance with the procedures set*

1 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
2 *Division 3 of Title 2 of the Government Code, that contains any*
3 *finding of fact that the licensee engaged in any act of sexual contact*
4 *with a patient, as defined in subdivision (c) of Section 729, or any*
5 *finding that the licensee has committed a sex offense, shall contain*
6 *an order revoking the license. The proposed decision shall not*
7 *contain any order staying the revocation of the licensee.*

8 *(b) As used in this section, the term sex offense shall mean any*
9 *of the following:*

10 *(1) Any offense for which registration is required by Section*
11 *290 of the Penal Code or a finding that a person committed such*
12 *an act.*

13 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
14 *or 647(a) or (d) of the Penal Code or a finding that a person*
15 *committed such an act.*

16 *(3) Any attempt to commit any of the offenses specified in this*
17 *section.*

18 *(4) Any offense committed or attempted in any other state or*
19 *against the laws of the United States which, if committed or*
20 *attempted in this state, would have been punishable as one or more*
21 *of the offenses specified in this section.*

22 *SEC. 76. Section 2766.4 is added to the Business and*
23 *Professions Code, to read:*

24 *2766.4. (a) Except as otherwise provided, with regard to an*
25 *individual who is required to register as a sex offender pursuant*
26 *to Section 290 of the Penal Code, or the equivalent in another*
27 *state or territory, under military law, or under federal law, the*
28 *board shall be subject to the following requirements:*

29 *(1) The board shall deny an application by the individual for*
30 *licensure in accordance with the procedures set forth in Chapter*
31 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
32 *2 of the Government Code.*

33 *(2) If the individual is licensed under this chapter, the board*
34 *shall promptly revoke the license of the individual in accordance*
35 *with the procedures set forth in Chapter 5 (commencing with*
36 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
37 *Code. The board shall not stay the revocation and place the license*
38 *on probation.*

1 (3) *The board shall not reinstate or reissue the individual's*
2 *license. The board shall not issue a stay of license denial nor place*
3 *the license on probation.*

4 (b) *This section shall not apply to any of the following:*

5 (1) *An individual who has been relieved under Section 290.5 of*
6 *the Penal Code of his or her duty to register as a sex offender, or*
7 *whose duty to register has otherwise been formally terminated*
8 *under California law or the law of the jurisdiction that requires*
9 *his or her registration as a sex offender.*

10 (2) *An individual who is required to register as a sex offender*
11 *pursuant to Section 290 of the Penal Code solely because of a*
12 *misdemeanor conviction under Section 314 of the Penal Code.*
13 *However, nothing in this paragraph shall prohibit the board from*
14 *exercising its discretion to discipline a licensee under any other*
15 *provision of state law based upon the licensee's conviction under*
16 *Section 314 of the Penal Code.*

17 (3) *Any administrative adjudication proceeding under Chapter*
18 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
19 *2 of the Government Code that is fully adjudicated prior to January*
20 *1, 2008. A petition for reinstatement of a revoked or surrendered*
21 *license shall be considered a new proceeding for purposes of this*
22 *paragraph, and the prohibition against reinstating a license to an*
23 *individual who is required to register as a sex offender shall be*
24 *applicable.*

25 SEC. 77. *Section 2766.5 is added to the Business and*
26 *Professions Code, to read:*

27 2766.5. (a) *Notwithstanding any other provision of law making*
28 *a communication between a licensee and his or her patients a*
29 *privileged communication, those provisions shall not apply to*
30 *investigations or proceedings conducted by the board. Members*
31 *of the board, deputies, employees, agents, the office of the Attorney*
32 *General, and representatives of the board shall keep in confidence*
33 *during the course of investigations the names of any patients whose*
34 *records are reviewed and may not disclose or reveal those names,*
35 *except as is necessary during the course of an investigation, unless*
36 *and until proceedings are instituted. The authority under this*
37 *subdivision to examine records of patients in the office of a licensee*
38 *is limited to records of patients who have complained to the board*
39 *about that licensee.*

1 (b) Notwithstanding any other provision of law, the Attorney
2 General and his or her investigative agents, and the board and its
3 investigators and representatives may inquire into any alleged
4 violation of the laws under the jurisdiction of the board or any
5 other federal or state law, regulation, or rule relevant to the
6 practice regulated by the board, whichever is applicable, and may
7 inspect documents relevant to those investigations in accordance
8 with the following procedures:

9 (1) Any document relevant to an investigation may be inspected,
10 and copies may be obtained, where a patient provides written
11 authorization.

12 (2) Any document relevant to the business operations of a
13 licensee, and not involving medical records attributable to
14 identifiable patients, may be inspected and copied where relevant
15 to an investigation of a licensee.

16 (c) In all cases where documents are inspected or copies of
17 those documents are received, their acquisition or review shall be
18 arranged so as not to unnecessarily disrupt the medical and
19 business operations of the licensee or of the facility where the
20 records are kept or used.

21 (d) Where certified documents are lawfully requested from
22 licensees in accordance with this section by the Attorney General
23 or his or her agents or deputies, or investigators of any board, the
24 documents shall be provided within 10 business days of receipt of
25 the request, unless the licensee is unable to provide the certified
26 documents within this time period for good cause, including, but
27 not limited to, physical inability to access the records in the time
28 allowed due to illness or travel. Failure to produce requested
29 certified documents or copies thereof, after being informed of the
30 required deadline, shall constitute unprofessional conduct. A board
31 may use its authority to cite and fine a licensee for any violation
32 of this section. This remedy is in addition to any other authority
33 of the board to sanction a licensee for a delay in producing
34 requested records.

35 (e) Searches conducted of the office or medical facility of any
36 licensee shall not interfere with the recordkeeping format or
37 preservation needs of any licensee necessary for the lawful care
38 of patients.

39 (f) The licensee shall cooperate with the board in furnishing
40 information or assistance as may be required, including, but not

1 *limited to, participation in an interview with investigators or*
2 *representatives of the board.*

3 *(g) This section shall not apply to a licensee who does not have*
4 *access to, and control over, certified medical records or other*
5 *types of documents that belong to or are controlled by a health*
6 *facility or clinic.*

7 *SEC. 78. Section 2766.6 is added to the Business and*
8 *Professions Code, to read:*

9 *2766.6. (a) (1) Notwithstanding any other provision of law,*
10 *a licensee who fails or refuses to comply with a request for the*
11 *certified medical records of a patient that is accompanied by that*
12 *patient's written authorization for release of records to a board*
13 *together with a notice citing this section and describing the*
14 *penalties for failure to comply with this section shall be required*
15 *to pay to the board a civil penalty of up to one thousand dollars*
16 *(\$1,000) per day for each day that the documents have not been*
17 *produced after the 15th day, up to ten thousand dollars (\$10,000),*
18 *unless the licensee is unable to provide the documents within this*
19 *time period for good cause.*

20 *(2) A health care facility shall comply with a request for the*
21 *certified medical records of a patient that is accompanied by that*
22 *patient's written authorization for release of records to a board*
23 *together with a notice citing this section and describing the*
24 *penalties for failure to comply with this section. Failure to provide*
25 *the authorizing patient's certified medical records to the board*
26 *within 15 days of receiving the request, authorization, and notice*
27 *shall subject the health care facility to a civil penalty, payable to*
28 *the board, of up to one thousand dollars (\$1,000) per day for each*
29 *day that the documents have not been produced after the 15th day,*
30 *up to ten thousand dollars (\$10,000), unless the health care facility*
31 *is unable to provide the documents within this time period for good*
32 *cause. This paragraph shall not require health care facilities to*
33 *assist the board in obtaining the patient's authorization. The board*
34 *shall pay the reasonable costs of copying the certified medical*
35 *records, but shall not be required to make that payment prior to*
36 *the production of the medical records.*

37 *(b) (1) A licensee who fails or refuses to comply with a court*
38 *order, issued in the enforcement of a subpoena, mandating the*
39 *release of records to the board, shall pay to the board a civil*
40 *penalty of up to one thousand dollars (\$1,000) per day for each*

1 day that the documents have not been produced after the date by
2 which the court order requires the documents to be produced, up
3 to ten thousand dollars (\$10,000), unless it is determined that the
4 order is unlawful or invalid. Any statute of limitations applicable
5 to the filing of an accusation by the board shall be tolled during
6 the period the licensee is out of compliance with the court order
7 and during any related appeals.

8 (2) Any licensee who fails or refuses to comply with a court
9 order, issued in the enforcement of a subpoena, mandating the
10 release of records to a board is guilty of a misdemeanor punishable
11 by a fine payable to the board not to exceed five thousand dollars
12 (\$5,000). The fine shall be added to the licensee's renewal fee if
13 it is not paid by the next succeeding renewal date. Any statute of
14 limitations applicable to the filing of an accusation by the board
15 shall be tolled during the period the licensee is out of compliance
16 with the court order and during any related appeals.

17 (3) A health care facility that fails or refuses to comply with a
18 court order, issued in the enforcement of a subpoena, mandating
19 the release of patient records to the board, that is accompanied
20 by a notice citing this section and describing the penalties for
21 failure to comply with this section, shall pay to the board a civil
22 penalty of up to one thousand dollars (\$1,000) per day for each
23 day that the documents have not been produced, up to ten thousand
24 dollars (\$10,000), after the date by which the court order requires
25 the documents to be produced, unless it is determined that the
26 order is unlawful or invalid. Any statute of limitations applicable
27 to the filing of an accusation by the board against a licensee shall
28 be tolled during the period the health care facility is out of
29 compliance with the court order and during any related appeals.

30 (4) Any health care facility that fails or refuses to comply with
31 a court order, issued in the enforcement of a subpoena, mandating
32 the release of records to the board is guilty of a misdemeanor
33 punishable by a fine payable to the board not to exceed five
34 thousand dollars (\$5,000). Any statute of limitations applicable
35 to the filing of an accusation by the healing arts board against a
36 licensee shall be tolled during the period the health care facility
37 is out of compliance with the court order and during any related
38 appeals.

39 (c) Multiple acts by a licensee in violation of subdivision (b)
40 shall be punishable by a fine not to exceed five thousand dollars

1 (\$5,000) or by imprisonment in a county jail not exceeding six
2 months, or by both that fine and imprisonment. Multiple acts by
3 a health care facility in violation of subdivision (b) shall be
4 punishable by a fine not to exceed five thousand dollars (\$5,000),
5 shall be reported to the State Department of Public Health, and
6 shall be considered as grounds for disciplinary action with respect
7 to licensure, including suspension or revocation of the license or
8 certificate.

9 (d) A failure or refusal of a licensee to comply with a court
10 order, issued in the enforcement of a subpoena, mandating the
11 release of records to the board constitutes unprofessional conduct
12 and is grounds for suspension or revocation of his or her license.

13 (e) Imposition of the civil penalties authorized by this section
14 shall be in accordance with the Administrative Procedure Act
15 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
16 2 of the Government Code). Any civil penalties paid to, or received
17 by, the board pursuant to this section shall be deposited into the
18 fund administered by the board.

19 (f) For purposes of this section, “certified medical records”
20 means a copy of the patient’s medical records authenticated by
21 the licensee or health care facility, as appropriate, on a form
22 prescribed by the licensee’s board.

23 (g) For purposes of this section, a “health care facility” means
24 a clinic or health facility licensed or exempt from licensure
25 pursuant to Division 2 (commencing with Section 1200) of the
26 Health and Safety Code.

27 (h) If a board complies with Section 1684.1, 2225.5, or 2969,
28 that board shall not be subject to the requirements of this section.

29 (i) This section shall not apply to a licensee who does not have
30 access to, or control over, certified medical records or other types
31 of documents that belong to or are controlled by a health facility
32 or clinic.

33 SEC. 79. Section 2766.7 is added to the Business and
34 Professions Code, to read:

35 2766.7. (a) Unless otherwise provided, on or after July 1,
36 2013, the board shall post on the Internet the following
37 information, including the name and license number, in its
38 possession, custody, or control regarding every licensee for which
39 the board licenses:

1 (1) With regard to the status of every license, whether or not
2 the licensee or former licensee is in good standing, subject to a
3 temporary restraining order, subject to an interim suspension
4 order, subject to a restriction or cease practice ordered pursuant
5 to Section 23 of the Penal Code, or subject to any of the
6 enforcement actions described in Section 803.1.

7 (2) With regard to prior discipline of a licensee, whether or not
8 the licensee or former licensee has been subject to discipline by
9 the board or by the board of another state or jurisdiction, as
10 described in Section 803.1.

11 (3) Any felony conviction of a licensee reported to the board.

12 (4) All current accusations filed by the Attorney General,
13 including those accusations that are on appeal. For purposes of
14 this paragraph, “current accusation” means an accusation that
15 has not been dismissed, withdrawn, or settled, and has not been
16 finally decided upon by an administrative law judge and the board
17 unless an appeal of that decision is pending.

18 (5) Any malpractice judgment or arbitration award imposed
19 against a licensee and reported to the healing arts board.

20 (6) Any misdemeanor conviction of a licensee that results in a
21 disciplinary action or an accusation that is not subsequently
22 withdrawn or dismissed.

23 (7) Appropriate disclaimers and explanatory statements to
24 accompany the above information, including an explanation of
25 what types of information are not disclosed. These disclaimers
26 and statements shall be developed by the healing arts board and
27 shall be adopted by regulation.

28 (b) The information provided on the Internet shall be in
29 accordance with the California Public Records Act (Chapter 3.5
30 (commencing with Section 6250) of Division 7 of Title 1 of the
31 Government Code) and the Information Practices Act of 1977
32 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
33 of Division 3 of the Civil Code) and shall comply with the
34 Department of Consumer Affairs Guidelines for Access to Public
35 Records.

36 (c) Information provided on the Internet may not include
37 personal information, unless otherwise provided pursuant to this
38 chapter, including the home telephone number, date of birth, or
39 social security number. The information may not include the

1 licensee's address, nor the city and county of the licensee's address
2 of record.

3 SEC. 80. Section 2766.8 is added to the Business and
4 Professions Code, to read:

5 2766.8. (a) Unless otherwise provided, if a licensee possesses
6 a license or is otherwise authorized to practice in any state other
7 than California or by any agency of the federal government and
8 that license or authority is suspended or revoked outright, the
9 California license of the licensee shall be suspended automatically
10 for the duration of the suspension or revocation, unless terminated
11 or rescinded as provided in subdivision (c). The healing arts board
12 shall notify the licensee of the license suspension and of his or her
13 right to have the issue of penalty heard as provided in this section.

14 (b) Upon its own motion or for good cause shown, the board
15 may decline to impose or may set aside the suspension when it
16 appears to be in the interest of justice to do so, with due regard
17 to maintaining the integrity of, and confidence in, the specific
18 healing art.

19 (c) The issue of penalty shall be heard by an administrative law
20 judge sitting alone or with a panel of the board, in the discretion
21 of the board. A licensee may request a hearing on the penalty and
22 that hearing shall be held within 90 days from the date of the
23 request. If the order suspending or revoking the license or authority
24 to practice is overturned on appeal, any discipline ordered
25 pursuant to this section shall automatically cease. Upon a showing
26 to the administrative law judge or panel by the licensee that the
27 out-of-state action is not a basis for discipline in California, the
28 suspension shall be rescinded. If an accusation for permanent
29 discipline is not filed within 90 days of the suspension imposed
30 pursuant to this section, the suspension shall automatically
31 terminate.

32 (d) The record of the proceedings that resulted in the suspension
33 or revocation of the licensee's out-of-state license or authority to
34 practice, including a transcript of the testimony therein, may be
35 received in evidence.

36 (e) This section shall not apply to a licensee who maintains his
37 or her primary practice in California, as evidenced by having
38 maintained a practice in this state for not less than one year
39 immediately preceding the date of suspension or revocation.

1 *Nothing in this section shall preclude a licensee's license from*
2 *being suspended pursuant to any other provision of law.*

3 *(f) This section shall not apply to a licensee whose license has*
4 *been surrendered, whose only discipline is a medical staff*
5 *disciplinary action at a federal hospital and not for medical*
6 *disciplinary cause or reason as that term is defined in Section 805,*
7 *or whose revocation or suspension has been stayed, even if the*
8 *licensee remains subject to terms of probation or other discipline.*

9 *(g) This section shall not apply to a suspension or revocation*
10 *imposed by a state that is based solely on the prior discipline of*
11 *the licensee by another state.*

12 *(h) The other provisions of this article setting forth a procedure*
13 *for the suspension or revocation of a licensee's license or*
14 *certificate shall not apply to summary suspensions issued pursuant*
15 *to this section. If a summary suspension has been issued pursuant*
16 *to this section, the licensee may request that the hearing on the*
17 *penalty conducted pursuant to subdivision (c) be held at the same*
18 *time as a hearing on the accusation.*

19 *(i) A board that complies with Section 2310 shall not be subject*
20 *to the requirements of this section.*

21 *SEC. 81. Section 2879.1 is added to the Business and*
22 *Professions Code, to read:*

23 *2879.1. (a) The board may delegate to its executive officer the*
24 *authority to adopt a proposed default decision where an*
25 *administrative action to revoke a license has been filed and the*
26 *licensee has failed to file a notice of defense or to appear at the*
27 *hearing and a proposed default decision revoking the license has*
28 *been issued.*

29 *(b) The board may delegate to its executive officer the authority*
30 *to adopt a proposed settlement agreement where an administrative*
31 *action to revoke a license has been filed by the board and the*
32 *licensee has agreed to the revocation or surrender of his or her*
33 *license.*

34 *(c) The executive officer shall, at scheduled board meetings,*
35 *report to the board the number of proposed default decisions or*
36 *proposed settlement agreements adopted pursuant to this section.*

37 *SEC. 82. Section 2879.2 is added to the Business and*
38 *Professions Code, to read:*

39 *2879.2. (a) Notwithstanding Section 11415.60 of the*
40 *Government Code, the board may enter into a settlement with a*

1 *licensee or applicant in lieu of the issuance of an accusation or*
2 *statement of issues against that licensee or applicant, as applicable.*

3 *(b) The settlement shall include language identifying the factual*
4 *basis for the action being taken and a list of the statutes or*
5 *regulations violated.*

6 *(c) A person who enters a settlement pursuant to this section is*
7 *not precluded from filing a petition, in the timeframe permitted by*
8 *law, to modify the terms of the settlement or petition for early*
9 *termination of probation, if probation is part of the settlement.*

10 *(d) Any settlement against a licensee executed pursuant to this*
11 *section shall be considered discipline and a public record and*
12 *shall be posted on the applicable board's Internet Web site. Any*
13 *settlement against an applicant executed pursuant to this section*
14 *shall be considered a public record and shall be posted on the*
15 *applicable board's Internet Web site.*

16 *(e) The executive officer shall, at scheduled board meetings,*
17 *report to the board the number of proposed settlement agreements*
18 *adopted pursuant to this section.*

19 *SEC. 83. Section 2879.3 is added to the Business and*
20 *Professions Code, to read:*

21 *2879.3. (a) The license of a licensee shall be suspended*
22 *automatically during any time that the licensee is incarcerated*
23 *after conviction of a felony, regardless of whether the conviction*
24 *has been appealed. The board shall, immediately upon receipt of*
25 *the certified copy of the record of conviction, determine whether*
26 *the license of the licensee has been automatically suspended by*
27 *virtue of his or her incarceration, and if so, the duration of that*
28 *suspension. The board shall notify the licensee in writing of the*
29 *license suspension and of his or her right to elect to have the issue*
30 *of penalty heard as provided in subdivision (d).*

31 *(b) Upon receipt of the certified copy of the record of conviction,*
32 *if after a hearing before an administrative law judge from the*
33 *Office of Administrative Hearings it is determined that the felony*
34 *for which the licensee was convicted was substantially related to*
35 *the qualifications, functions, or duties of a licensee, the board*
36 *shall suspend the license until the time for appeal has elapsed, if*
37 *no appeal has been taken, or until the judgment of conviction has*
38 *been affirmed on appeal or has otherwise become final, and until*
39 *further order of the board.*

1 (c) Notwithstanding subdivision (b), a conviction of a charge
2 of violating any federal statute or regulation or any statute or
3 regulation of this state, regulating dangerous drugs or controlled
4 substances, or a conviction of Section 187, 261, 262, or 288 of the
5 Penal Code, shall be conclusively presumed to be substantially
6 related to the qualifications, functions, or duties of a licensee and
7 no hearing shall be held on this issue. However, upon its own
8 motion or for good cause shown, the board may decline to impose
9 or may set aside the suspension when it appears to be in the interest
10 of justice to do so, with due regard to maintaining the integrity of,
11 and confidence in, the practice regulated by the board.

12 (d) (1) Discipline may be ordered against a licensee in
13 accordance with the statutes and regulations of the board when
14 the time for appeal has elapsed, the judgment of conviction has
15 been affirmed on appeal, or an order granting probation is made
16 suspending the imposition of sentence, irrespective of a subsequent
17 order under Section 1203.4 of the Penal Code allowing the person
18 to withdraw his or her plea of guilty and to enter a plea of not
19 guilty, setting aside the verdict of guilty, or dismissing the
20 accusation, complaint, information, or indictment.

21 (2) The issue of penalty shall be heard by an administrative law
22 judge from the Office of Administrative Hearings. The hearing
23 shall not be had until the judgment of conviction has become final
24 or, irrespective of a subsequent order under Section 1203.4 of the
25 Penal Code, an order granting probation has been made
26 suspending the imposition of sentence; except that a licensee may,
27 at his or her option, elect to have the issue of penalty decided
28 before those time periods have elapsed. Where the licensee so
29 elects, the issue of penalty shall be heard in the manner described
30 in subdivision (b) at the hearing to determine whether the
31 conviction was substantially related to the qualifications, functions,
32 or duties of a licensee. If the conviction of a licensee who has made
33 this election is overturned on appeal, any discipline ordered
34 pursuant to this section shall automatically cease. Nothing in this
35 subdivision shall prohibit the board from pursuing disciplinary
36 action based on any cause other than the overturned conviction.

37 (e) The record of the proceedings resulting in a conviction,
38 including a transcript of the testimony in those proceedings, may
39 be received in evidence.

1 (f) Any other provision of law setting forth a procedure for the
2 suspension or revocation of a license issued by the board shall not
3 apply to proceedings conducted pursuant to this section.

4 SEC. 84. Section 2879.4 is added to the Business and
5 Professions Code, to read:

6 2879.4. (a) Except as otherwise provided, any proposed
7 decision or decision issued in accordance with the procedures set
8 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
9 Division 3 of Title 2 of the Government Code, that contains any
10 finding of fact that the licensee engaged in any act of sexual contact
11 with a patient, as defined in subdivision (c) of Section 729, or any
12 finding that the licensee has committed a sex offense, shall contain
13 an order revoking the license. The proposed decision shall not
14 contain any order staying the revocation of the licensee.

15 (b) As used in this section, the term sex offense shall mean any
16 of the following:

17 (1) Any offense for which registration is required by Section
18 290 of the Penal Code or a finding that a person committed such
19 an act.

20 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
21 or 647(a) or (d) of the Penal Code or a finding that a person
22 committed such an act.

23 (3) Any attempt to commit any of the offenses specified in this
24 section.

25 (4) Any offense committed or attempted in any other state or
26 against the laws of the United States which, if committed or
27 attempted in this state, would have been punishable as one or more
28 of the offenses specified in this section.

29 SEC. 85. Section 2879.5 is added to the Business and
30 Professions Code, to read:

31 2879.5. (a) Except as otherwise provided, with regard to an
32 individual who is required to register as a sex offender pursuant
33 to Section 290 of the Penal Code, or the equivalent in another
34 state or territory, under military law, or under federal law, the
35 board shall be subject to the following requirements:

36 (1) The board shall deny an application by the individual for
37 licensure in accordance with the procedures set forth in Chapter
38 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
39 2 of the Government Code.

1 (2) *If the individual is licensed under this chapter, the board*
2 *shall promptly revoke the license of the individual in accordance*
3 *with the procedures set forth in Chapter 5 (commencing with*
4 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
5 *Code. The board shall not stay the revocation and place the license*
6 *on probation.*

7 (3) *The board shall not reinstate or reissue the individual's*
8 *license. The board shall not issue a stay of license denial nor place*
9 *the license on probation.*

10 (b) *This section shall not apply to any of the following:*

11 (1) *An individual who has been relieved under Section 290.5 of*
12 *the Penal Code of his or her duty to register as a sex offender, or*
13 *whose duty to register has otherwise been formally terminated*
14 *under California law or the law of the jurisdiction that requires*
15 *his or her registration as a sex offender.*

16 (2) *An individual who is required to register as a sex offender*
17 *pursuant to Section 290 of the Penal Code solely because of a*
18 *misdemeanor conviction under Section 314 of the Penal Code.*
19 *However, nothing in this paragraph shall prohibit the board from*
20 *exercising its discretion to discipline a licensee under any other*
21 *provision of state law based upon the licensee's conviction under*
22 *Section 314 of the Penal Code.*

23 (3) *Any administrative adjudication proceeding under Chapter*
24 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
25 *2 of the Government Code that is fully adjudicated prior to January*
26 *1, 2008. A petition for reinstatement of a revoked or surrendered*
27 *license shall be considered a new proceeding for purposes of this*
28 *paragraph, and the prohibition against reinstating a license to an*
29 *individual who is required to register as a sex offender shall be*
30 *applicable.*

31 SEC. 86. *Section 2879.6 is added to the Business and*
32 *Professions Code, to read:*

33 2879.6. (a) *Notwithstanding any other provision of law making*
34 *a communication between a licensee and his or her patients a*
35 *privileged communication, those provisions shall not apply to*
36 *investigations or proceedings conducted by the board. Members*
37 *of the board, deputies, employees, agents, the office of the Attorney*
38 *General, and representatives of the board shall keep in confidence*
39 *during the course of investigations the names of any patients whose*
40 *records are reviewed and may not disclose or reveal those names,*

1 *except as is necessary during the course of an investigation, unless*
2 *and until proceedings are instituted. The authority under this*
3 *subdivision to examine records of patients in the office of a licensee*
4 *is limited to records of patients who have complained to the board*
5 *about that licensee.*

6 *(b) Notwithstanding any other provision of law, the Attorney*
7 *General and his or her investigative agents, and the board and its*
8 *investigators and representatives may inquire into any alleged*
9 *violation of the laws under the jurisdiction of the board or any*
10 *other federal or state law, regulation, or rule relevant to the*
11 *practice regulated by the board, whichever is applicable, and may*
12 *inspect documents relevant to those investigations in accordance*
13 *with the following procedures:*

14 *(1) Any document relevant to an investigation may be inspected,*
15 *and copies may be obtained, where a patient provides written*
16 *authorization.*

17 *(2) Any document relevant to the business operations of a*
18 *licensee, and not involving medical records attributable to*
19 *identifiable patients, may be inspected and copied where relevant*
20 *to an investigation of a licensee.*

21 *(c) In all cases where documents are inspected or copies of*
22 *those documents are received, their acquisition or review shall be*
23 *arranged so as not to unnecessarily disrupt the medical and*
24 *business operations of the licensee or of the facility where the*
25 *records are kept or used.*

26 *(d) Where certified documents are lawfully requested from*
27 *licensees in accordance with this section by the Attorney General*
28 *or his or her agents or deputies, or investigators of any board, the*
29 *documents shall be provided within 10 business days of receipt of*
30 *the request, unless the licensee is unable to provide the certified*
31 *documents within this time period for good cause, including, but*
32 *not limited to, physical inability to access the records in the time*
33 *allowed due to illness or travel. Failure to produce requested*
34 *certified documents or copies thereof, after being informed of the*
35 *required deadline, shall constitute unprofessional conduct. A board*
36 *may use its authority to cite and fine a licensee for any violation*
37 *of this section. This remedy is in addition to any other authority*
38 *of the board to sanction a licensee for a delay in producing*
39 *requested records.*

1 (e) Searches conducted of the office or medical facility of any
2 licensee shall not interfere with the recordkeeping format or
3 preservation needs of any licensee necessary for the lawful care
4 of patients.

5 (f) The licensee shall cooperate with the board in furnishing
6 information or assistance as may be required, including, but not
7 limited to, participation in an interview with investigators or
8 representatives of the board.

9 (g) This section shall not apply to a licensee who does not have
10 access to, and control over, certified medical records or other
11 types of documents that belong to or are controlled by a health
12 facility or clinic.

13 SEC. 87. Section 2879.7 is added to the Business and
14 Professions Code, to read:

15 2879.7. (a) (1) Notwithstanding any other provision of law,
16 a licensee who fails or refuses to comply with a request for the
17 certified medical records of a patient that is accompanied by that
18 patient's written authorization for release of records to a board
19 together with a notice citing this section and describing the
20 penalties for failure to comply with this section shall be required
21 to pay to the board a civil penalty of up to one thousand dollars
22 (\$1,000) per day for each day that the documents have not been
23 produced after the 15th day, up to ten thousand dollars (\$10,000),
24 unless the licensee is unable to provide the documents within this
25 time period for good cause.

26 (2) A health care facility shall comply with a request for the
27 certified medical records of a patient that is accompanied by that
28 patient's written authorization for release of records to a board
29 together with a notice citing this section and describing the
30 penalties for failure to comply with this section. Failure to provide
31 the authorizing patient's certified medical records to the board
32 within 15 days of receiving the request, authorization, and notice
33 shall subject the health care facility to a civil penalty, payable to
34 the healing arts board, of up to one thousand dollars (\$1,000) per
35 day for each day that the documents have not been produced after
36 the 15th day, up to ten thousand dollars (\$10,000), unless the
37 health care facility is unable to provide the documents within this
38 time period for good cause. This paragraph shall not require health
39 care facilities to assist the board in obtaining the patient's
40 authorization. The board shall pay the reasonable costs of copying

1 *the certified medical records, but shall not be required to make*
2 *that payment prior to the production of the medical records.*

3 *(b) (1) A licensee who fails or refuses to comply with a court*
4 *order, issued in the enforcement of a subpoena, mandating the*
5 *release of records to the board, shall pay to the board a civil*
6 *penalty of up to one thousand dollars (\$1,000) per day for each*
7 *day that the documents have not been produced after the date by*
8 *which the court order requires the documents to be produced, up*
9 *to ten thousand dollars (\$10,000), unless it is determined that the*
10 *order is unlawful or invalid. Any statute of limitations applicable*
11 *to the filing of an accusation by the healing arts board shall be*
12 *tolled during the period the licensee is out of compliance with the*
13 *court order and during any related appeals.*

14 *(2) Any licensee who fails or refuses to comply with a court*
15 *order, issued in the enforcement of a subpoena, mandating the*
16 *release of records to a board is guilty of a misdemeanor punishable*
17 *by a fine payable to the board not to exceed five thousand dollars*
18 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
19 *it is not paid by the next succeeding renewal date. Any statute of*
20 *limitations applicable to the filing of an accusation by the board*
21 *shall be tolled during the period the licensee is out of compliance*
22 *with the court order and during any related appeals.*

23 *(3) A health care facility that fails or refuses to comply with a*
24 *court order, issued in the enforcement of a subpoena, mandating*
25 *the release of patient records to the board, that is accompanied*
26 *by a notice citing this section and describing the penalties for*
27 *failure to comply with this section, shall pay to the board a civil*
28 *penalty of up to one thousand dollars (\$1,000) per day for each*
29 *day that the documents have not been produced, up to ten thousand*
30 *dollars (\$10,000), after the date by which the court order requires*
31 *the documents to be produced, unless it is determined that the*
32 *order is unlawful or invalid. Any statute of limitations applicable*
33 *to the filing of an accusation by the board against a licensee shall*
34 *be tolled during the period the health care facility is out of*
35 *compliance with the court order and during any related appeals.*

36 *(4) Any health care facility that fails or refuses to comply with*
37 *a court order, issued in the enforcement of a subpoena, mandating*
38 *the release of records to the board is guilty of a misdemeanor*
39 *punishable by a fine payable to the board not to exceed five*
40 *thousand dollars (\$5,000). Any statute of limitations applicable*

1 to the filing of an accusation by the board against a licensee shall
2 be tolled during the period the health care facility is out of
3 compliance with the court order and during any related appeals.

4 (c) Multiple acts by a licensee in violation of subdivision (b)
5 shall be punishable by a fine not to exceed five thousand dollars
6 (\$5,000) or by imprisonment in a county jail not exceeding six
7 months, or by both that fine and imprisonment. Multiple acts by
8 a health care facility in violation of subdivision (b) shall be
9 punishable by a fine not to exceed five thousand dollars (\$5,000),
10 shall be reported to the State Department of Public Health, and
11 shall be considered as grounds for disciplinary action with respect
12 to licensure, including suspension or revocation of the license or
13 certificate.

14 (d) A failure or refusal of a licensee to comply with a court
15 order, issued in the enforcement of a subpoena, mandating the
16 release of records to the board constitutes unprofessional conduct
17 and is grounds for suspension or revocation of his or her license.

18 (e) Imposition of the civil penalties authorized by this section
19 shall be in accordance with the Administrative Procedure Act
20 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
21 2 of the Government Code). Any civil penalties paid to, or received
22 by, the board pursuant to this section shall be deposited into the
23 fund administered by the board.

24 (f) For purposes of this section, “certified medical records”
25 means a copy of the patient’s medical records authenticated by
26 the licensee or health care facility, as appropriate, on a form
27 prescribed by the licensee’s board.

28 (g) For purposes of this section, a “health care facility” means
29 a clinic or health facility licensed or exempt from licensure
30 pursuant to Division 2 (commencing with Section 1200) of the
31 Health and Safety Code.

32 (h) If a board complies with Section 1684.1, 2225.5, or 2969,
33 that board shall not be subject to the requirements of this section.

34 (i) This section shall not apply to a licensee who does not have
35 access to, or control over, certified medical records or other types
36 of documents that belong to or are controlled by a health facility
37 or clinic.

38 SEC. 88. Section 2879.8 is added to the Business and
39 Professions Code, to read:

1 2879.8. *Unless otherwise provided, on or after July 1, 2013,*
2 *the board shall post on its Internet Web site the following*
3 *information, including the name and license number, in its*
4 *possession, custody, or control regarding every licensee for which*
5 *the board licenses:*

6 (a) *With regard to the status of every license, whether or not*
7 *the licensee or former licensee is in good standing, subject to a*
8 *temporary restraining order, subject to an interim suspension*
9 *order, subject to a restriction or cease practice ordered pursuant*
10 *to Section 23 of the Penal Code, or subject to any of the*
11 *enforcement actions described in Section 803.1.*

12 (b) *With regard to prior discipline of a licensee, whether or not*
13 *the licensee or former licensee has been subject to discipline by*
14 *the board or by the board of another state or jurisdiction, as*
15 *described in Section 803.1.*

16 (c) *Any felony conviction of a licensee reported to the board.*

17 (d) *All current accusations filed by the Attorney General,*
18 *including those accusations that are on appeal. For purposes of*
19 *this paragraph, “current accusation” means an accusation that*
20 *has not been dismissed, withdrawn, or settled, and has not been*
21 *finally decided upon by an administrative law judge and the board*
22 *unless an appeal of that decision is pending.*

23 (e) *Any malpractice judgment or arbitration award imposed*
24 *against a licensee and reported to the board.*

25 (f) *Any hospital disciplinary action imposed against a licensee*
26 *that resulted in the termination or revocation of a licensee’s*
27 *hospital staff privileges for a medical disciplinary cause or reason*
28 *pursuant to Section 2879.7 or 805.*

29 (g) *Any misdemeanor conviction of a licensee that results in a*
30 *disciplinary action or an accusation that is not subsequently*
31 *withdrawn or dismissed.*

32 (h) *Appropriate disclaimers and explanatory statements to*
33 *accompany the above information, including an explanation of*
34 *what types of information are not disclosed. These disclaimers*
35 *and statements shall be developed by the board and shall be*
36 *adopted by regulation.*

37 (i) *The information provided on the Internet shall be in*
38 *accordance with the California Public Records Act (Chapter 3.5*
39 *(commencing with Section 6250) of Division 7 of Title 1 of the*
40 *Government Code) and the Information Practices Act of 1977*

1 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
2 *of Division 3 of the Civil Code) and shall comply with the*
3 *Department of Consumer Affairs Guidelines for Access to Public*
4 *Records.*

5 *(j) Information provided on the Internet may not include*
6 *personal information, unless otherwise provided pursuant to this*
7 *chapter, including the home telephone number, date of birth, or*
8 *social security number. The information may not include the*
9 *licensee's address, but may include the city and county of the*
10 *licensee's address of record.*

11 *SEC. 89. Section 2879.10 is added to the Business and*
12 *Professions Code, to read:*

13 *2879.10. (a) Unless otherwise provided, if a licensee possesses*
14 *a license or is otherwise authorized to practice in any state other*
15 *than California or by any agency of the federal government and*
16 *that license or authority is suspended or revoked outright, the*
17 *California license of the licensee shall be suspended automatically*
18 *for the duration of the suspension or revocation, unless terminated*
19 *or rescinded as provided in subdivision (c). The healing arts board*
20 *shall notify the licensee of the license suspension and of his or her*
21 *right to have the issue of penalty heard as provided in this section.*

22 *(b) Upon its own motion or for good cause shown, the board*
23 *may decline to impose or may set aside the suspension when it*
24 *appears to be in the interest of justice to do so, with due regard*
25 *to maintaining the integrity of, and confidence in, the specific*
26 *healing art.*

27 *(c) The issue of penalty shall be heard by an administrative law*
28 *judge sitting alone or with a panel of the board, in the discretion*
29 *of the board. A licensee may request a hearing on the penalty and*
30 *that hearing shall be held within 90 days from the date of the*
31 *request. If the order suspending or revoking the license or authority*
32 *to practice is overturned on appeal, any discipline ordered*
33 *pursuant to this section shall automatically cease. Upon a showing*
34 *to the administrative law judge or panel by the licensee that the*
35 *out-of-state action is not a basis for discipline in California, the*
36 *suspension shall be rescinded. If an accusation for permanent*
37 *discipline is not filed within 90 days of the suspension imposed*
38 *pursuant to this section, the suspension shall automatically*
39 *terminate.*

1 (d) *The record of the proceedings that resulted in the suspension*
2 *or revocation of the licensee's out-of-state license or authority to*
3 *practice, including a transcript of the testimony therein, may be*
4 *received in evidence.*

5 (e) *This section shall not apply to a licensee who maintains his*
6 *or her primary practice in California, as evidenced by having*
7 *maintained a practice in this state for not less than one year*
8 *immediately preceding the date of suspension or revocation.*
9 *Nothing in this section shall preclude a licensee's license from*
10 *being suspended pursuant to any other provision of law.*

11 (f) *This section shall not apply to a licensee whose license has*
12 *been surrendered, whose only discipline is a medical staff*
13 *disciplinary action at a federal hospital and not for medical*
14 *disciplinary cause or reason as that term is defined in Section 805,*
15 *or whose revocation or suspension has been stayed, even if the*
16 *licensee remains subject to terms of probation or other discipline.*

17 (g) *This section shall not apply to a suspension or revocation*
18 *imposed by a state that is based solely on the prior discipline of*
19 *the licensee by another state.*

20 (h) *The other provisions of this article setting forth a procedure*
21 *for the suspension or revocation of a licensee's license or*
22 *certificate shall not apply to summary suspensions issued pursuant*
23 *to this section. If a summary suspension has been issued pursuant*
24 *to this section, the licensee may request that the hearing on the*
25 *penalty conducted pursuant to subdivision (c) be held at the same*
26 *time as a hearing on the accusation.*

27 (i) *A board that complies with Section 2310 shall not be subject*
28 *to the requirements of this section.*

29 SEC. 90. *Section 2960.1 of the Business and Professions Code*
30 *is amended to read:*

31 2960.1. (a) *Notwithstanding Section 2960, any proposed*
32 *decision or decision issued under this chapter in accordance with*
33 *the procedures set forth in Chapter 5 (commencing with Section*
34 *11500) of Part 1 of Division 3 of Title 2 of the Government Code,*
35 *that contains any finding of fact that the licensee or registrant*
36 *engaged in any act of sexual contact, as defined in Section 728,*
37 *when that act is with a patient, or with a former patient within two*
38 *years following termination of therapy, shall contain an order of*
39 *revocation. The revocation shall not be stayed by the administrative*
40 *law judge.*

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 91. Section 2969.1 is added to the Business and Professions Code, to read:

2969.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 92. Section 2969.2 is added to the Business and Professions Code, to read:

1 2969.2. (a) Notwithstanding Section 11415.60 of the
2 Government Code, the board may enter into a settlement with a
3 licensee or applicant in lieu of the issuance of an accusation or
4 statement of issues against that licensee or applicant, as applicable.

5 (b) The settlement shall include language identifying the factual
6 basis for the action being taken and a list of the statutes or
7 regulations violated.

8 (c) A person who enters a settlement pursuant to this section is
9 not precluded from filing a petition, in the timeframe permitted by
10 law, to modify the terms of the settlement or petition for early
11 termination of probation, if probation is part of the settlement.

12 (d) Any settlement against a licensee executed pursuant to this
13 section shall be considered discipline and a public record and
14 shall be posted on the applicable board's Internet Web site. Any
15 settlement against an applicant executed pursuant to this section
16 shall be considered a public record and shall be posted on the
17 applicable board's Internet Web site.

18 (e) The executive officer shall, at scheduled board meetings,
19 report to the board the number of proposed settlement agreements
20 adopted pursuant to this section.

21 SEC. 93. Section 2969.3 is added to the Business and
22 Professions Code, to read:

23 2969.3. Unless otherwise provided, on or after July 1, 2013,
24 the board shall post on its Internet Web site the following
25 information, including the name and license number, in its
26 possession, custody, or control regarding every licensee for which
27 the board licenses:

28 (a) With regard to the status of every license, whether or not
29 the licensee or former licensee is in good standing, subject to a
30 temporary restraining order, subject to an interim suspension
31 order, subject to a restriction or cease practice ordered pursuant
32 to Section 23 of the Penal Code, or subject to any of the
33 enforcement actions described in Section 803.1.

34 (b) With regard to prior discipline of a licensee, whether or not
35 the licensee or former licensee has been subject to discipline by
36 the board or by the board of another state or jurisdiction, as
37 described in Section 803.1.

38 (c) Any felony conviction of a licensee reported to the board.

39 (d) All current accusations filed by the Attorney General,
40 including those accusations that are on appeal. For purposes of

1 *this paragraph, “current accusation” means an accusation that*
2 *has not been dismissed, withdrawn, or settled, and has not been*
3 *finally decided upon by an administrative law judge and the board*
4 *unless an appeal of that decision is pending.*

5 *(e) Any malpractice judgment or arbitration award imposed*
6 *against a licensee and reported to the board.*

7 *(f) Any hospital disciplinary action imposed against a licensee*
8 *that resulted in the termination or revocation of a licensee’s*
9 *hospital staff privileges for a medical disciplinary cause or reason*
10 *pursuant to Section 805.*

11 *(g) Any misdemeanor conviction of a licensee that results in a*
12 *disciplinary action or an accusation that is not subsequently*
13 *withdrawn or dismissed.*

14 *(h) Appropriate disclaimers and explanatory statements to*
15 *accompany the above information, including an explanation of*
16 *what types of information are not disclosed. These disclaimers*
17 *and statements shall be developed by the board and shall be*
18 *adopted by regulation.*

19 *(i) The information provided on the Internet shall be in*
20 *accordance with the California Public Records Act (Chapter 3.5*
21 *(commencing with Section 6250) of Division 7 of Title 1 of the*
22 *Government Code) and the Information Practices Act of 1977*
23 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
24 *of Division 3 of the Civil Code) and shall comply with the*
25 *Department of Consumer Affairs Guidelines for Access to Public*
26 *Records.*

27 *(j) Information provided on the Internet may not include*
28 *personal information, unless otherwise provided pursuant to this*
29 *chapter, including the home telephone number, date of birth, or*
30 *social security number. The information may not include the*
31 *licensee’s address, but may include the city and county of the*
32 *licensee’s address of record.*

33 *SEC. 94. Section 2969.4 is added to the Business and*
34 *Professions Code, to read:*

35 *2969.4. (a) Unless otherwise provided, if a licensee possesses*
36 *a license or is otherwise authorized to practice in any state other*
37 *than California or by any agency of the federal government and*
38 *that license or authority is suspended or revoked outright, the*
39 *California license of the licensee shall be suspended automatically*
40 *for the duration of the suspension or revocation, unless terminated*

1 or rescinded as provided in subdivision (c). The board shall notify
2 the licensee of the license suspension and of his or her right to
3 have the issue of penalty heard as provided in this section.

4 (b) Upon its own motion or for good cause shown, the board
5 may decline to impose or may set aside the suspension when it
6 appears to be in the interest of justice to do so, with due regard
7 to maintaining the integrity of, and confidence in, the specific
8 healing art.

9 (c) The issue of penalty shall be heard by an administrative law
10 judge sitting alone or with a panel of the board, in the discretion
11 of the board. A licensee may request a hearing on the penalty and
12 that hearing shall be held within 90 days from the date of the
13 request. If the order suspending or revoking the license or authority
14 to practice is overturned on appeal, any discipline ordered
15 pursuant to this section shall automatically cease. Upon a showing
16 to the administrative law judge or panel by the licensee that the
17 out-of-state action is not a basis for discipline in California, the
18 suspension shall be rescinded. If an accusation for permanent
19 discipline is not filed within 90 days of the suspension imposed
20 pursuant to this section, the suspension shall automatically
21 terminate.

22 (d) The record of the proceedings that resulted in the suspension
23 or revocation of the licensee's out-of-state license or authority to
24 practice, including a transcript of the testimony therein, may be
25 received in evidence.

26 (e) This section shall not apply to a licensee who maintains his
27 or her primary practice in California, as evidenced by having
28 maintained a practice in this state for not less than one year
29 immediately preceding the date of suspension or revocation.
30 Nothing in this section shall preclude a licensee's license from
31 being suspended pursuant to any other provision of law.

32 (f) This section shall not apply to a licensee whose license has
33 been surrendered, whose only discipline is a medical staff
34 disciplinary action at a federal hospital and not for medical
35 disciplinary cause or reason as that term is defined in Section 805,
36 or whose revocation or suspension has been stayed, even if the
37 licensee remains subject to terms of probation or other discipline.

38 (g) This section shall not apply to a suspension or revocation
39 imposed by a state that is based solely on the prior discipline of
40 the licensee by another state.

1 (h) *The other provisions of this article setting forth a procedure*
2 *for the suspension or revocation of a licensee's license or*
3 *certificate shall not apply to summary suspensions issued pursuant*
4 *to this section. If a summary suspension has been issued pursuant*
5 *to this section, the licensee may request that the hearing on the*
6 *penalty conducted pursuant to subdivision (c) be held at the same*
7 *time as a hearing on the accusation.*

8 (i) *A board that complies with Section 2310 shall not be subject*
9 *to the requirements of this section.*

10 SEC. 95. *Section 3112 is added to the Business and Professions*
11 *Code, to read:*

12 3112. (a) *The board may delegate to its executive officer the*
13 *authority to adopt a proposed default decision where an*
14 *administrative action to revoke a certificate of registration has*
15 *been filed and the registrant has failed to file a notice of defense*
16 *or to appear at the hearing and a proposed default decision*
17 *revoking the certificate of registration has been issued.*

18 (b) *The board may delegate to its executive officer the authority*
19 *to adopt a proposed settlement agreement where an administrative*
20 *action to revoke a certificate of registration has been filed by the*
21 *board and the registrant has agreed to the revocation or surrender*
22 *of his or her certificate of registration.*

23 (c) *The executive officer shall, at scheduled board meetings,*
24 *report to the board the number of proposed default decisions or*
25 *proposed settlement agreements adopted pursuant to this section.*

26 SEC. 96. *Section 3112.1 is added to the Business and*
27 *Professions Code, to read:*

28 3112.1. (a) *Notwithstanding Section 11415.60 of the*
29 *Government Code, the board may enter into a settlement with a*
30 *registrant or applicant in lieu of the issuance of an accusation or*
31 *statement of issues against that registrant or applicant, as*
32 *applicable.*

33 (b) *The settlement shall include language identifying the factual*
34 *basis for the action being taken and a list of the statutes or*
35 *regulations violated.*

36 (c) *A person who enters a settlement pursuant to this section is*
37 *not precluded from filing a petition, in the timeframe permitted by*
38 *law, to modify the terms of the settlement or petition for early*
39 *termination of probation, if probation is part of the settlement.*

1 (d) Any settlement against a registrant executed pursuant to
2 this section shall be considered discipline and a public record and
3 shall be posted on the applicable board's Internet Web site. Any
4 settlement against an applicant executed pursuant to this section
5 shall be considered a public record and shall be posted on the
6 applicable board's Internet Web site.

7 (e) The executive officer shall, at scheduled board meetings,
8 report to the board the number of proposed settlement agreements
9 adopted pursuant to this section.

10 SEC. 97. Section 3112.2 is added to the Business and
11 Professions Code, to read:

12 3112.2. (a) The certificate of registration of a registrant shall
13 be suspended automatically during any time that the registrant is
14 incarcerated after conviction of a felony, regardless of whether
15 the conviction has been appealed. The board shall, immediately
16 upon receipt of the certified copy of the record of conviction,
17 determine whether the certificate of registration of the registrant
18 has been automatically suspended by virtue of his or her
19 incarceration, and if so, the duration of that suspension. The board
20 shall notify the registrant in writing of the certificate of registration
21 suspension and of his or her right to elect to have the issue of
22 penalty heard as provided in subdivision (d).

23 (b) Upon receipt of the certified copy of the record of conviction,
24 if after a hearing before an administrative law judge from the
25 Office of Administrative Hearings it is determined that the felony
26 for which the registrant was convicted was substantially related
27 to the qualifications, functions, or duties of a registrant, the board
28 shall suspend the certificate of registration until the time for appeal
29 has elapsed, if no appeal has been taken, or until the judgment of
30 conviction has been affirmed on appeal or has otherwise become
31 final, and until further order of the board.

32 (c) Notwithstanding subdivision (b), a conviction of a charge
33 of violating any federal statute or regulation or any statute or
34 regulation of this state, regulating dangerous drugs or controlled
35 substances, or a conviction of Section 187, 261, 262, or 288 of the
36 Penal Code, shall be conclusively presumed to be substantially
37 related to the qualifications, functions, or duties of a registrant
38 and no hearing shall be held on this issue. However, upon its own
39 motion or for good cause shown, the board may decline to impose
40 or may set aside the suspension when it appears to be in the interest

1 of justice to do so, with due regard to maintaining the integrity of,
2 and confidence in, the practice regulated by the board.

3 (d) (1) Discipline may be ordered against a registrant in
4 accordance with the statutes and regulations of the board when
5 the time for appeal has elapsed, the judgment of conviction has
6 been affirmed on appeal, or an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent
8 order under Section 1203.4 of the Penal Code allowing the person
9 to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, setting aside the verdict of guilty, or dismissing the
11 accusation, complaint, information, or indictment.

12 (2) The issue of penalty shall be heard by an administrative law
13 judge from the Office of Administrative Hearings. The hearing
14 shall not be had until the judgment of conviction has become final
15 or, irrespective of a subsequent order under Section 1203.4 of the
16 Penal Code, an order granting probation has been made
17 suspending the imposition of sentence; except that a registrant
18 may, at his or her option, elect to have the issue of penalty decided
19 before those time periods have elapsed. Where the registrant so
20 elects, the issue of penalty shall be heard in the manner described
21 in subdivision (b) at the hearing to determine whether the
22 conviction was substantially related to the qualifications, functions,
23 or duties of a registrant. If the conviction of a registrant who has
24 made this election is overturned on appeal, any discipline ordered
25 pursuant to this section shall automatically cease. Nothing in this
26 subdivision shall prohibit the board from pursuing disciplinary
27 action based on any cause other than the overturned conviction.

28 (e) The record of the proceedings resulting in a conviction,
29 including a transcript of the testimony in those proceedings, may
30 be received in evidence.

31 (f) Any other provision of law setting forth a procedure for the
32 suspension or revocation of a certificate of registration issued by
33 the board shall not apply to proceedings conducted pursuant to
34 this section.

35 SEC. 98. Section 3112.3 is added to the Business and
36 Professions Code, to read:

37 3112.3. (a) Except as otherwise provided, any proposed
38 decision or decision issued in accordance with the procedures set
39 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
40 Division 3 of Title 2 of the Government Code, that contains any

1 *finding of fact that the registrant engaged in any act of sexual*
2 *contact with a patient, as defined in subdivision (c) of Section 729,*
3 *or any finding that the licensee has committed a sex offense, shall*
4 *contain an order revoking the license. The proposed decision shall*
5 *not contain any order staying the revocation of the certificate.*

6 *(b) As used in this section, the term sex offense shall mean any*
7 *of the following:*

8 *(1) Any offense for which registration is required by Section*
9 *290 of the Penal Code or a finding that a person committed such*
10 *an act.*

11 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
12 *or 647(a) or (d) of the Penal Code or a finding that a person*
13 *committed such an act.*

14 *(3) Any attempt to commit any of the offenses specified in this*
15 *section.*

16 *(4) Any offense committed or attempted in any other state or*
17 *against the laws of the United States which, if committed or*
18 *attempted in this state, would have been punishable as one or more*
19 *of the offenses specified in this section.*

20 *SEC. 99. Section 3112.4 is added to the Business and*
21 *Professions Code, to read:*

22 *3112.4. (a) Except as otherwise provided, with regard to an*
23 *individual who is required to register as a sex offender pursuant*
24 *to Section 290 of the Penal Code, or the equivalent in another*
25 *state or territory, under military law, or under federal law, the*
26 *board shall be subject to the following requirements:*

27 *(1) The board shall deny an application by the individual for*
28 *registration in accordance with the procedures set forth in Chapter*
29 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
30 *2 of the Government Code.*

31 *(2) If the individual is registered under this chapter, the board*
32 *shall promptly revoke the certificate of registration of the*
33 *individual in accordance with the procedures set forth in Chapter*
34 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
35 *2 of the Government Code. The board shall not stay the revocation*
36 *and place the certificate of registration on probation.*

37 *(3) The board shall not reinstate or reissue the individual's*
38 *certificate of registration. The board shall not issue a stay of*
39 *certificate of registration denial nor place the certificate of*
40 *registration on probation.*

1 **(b)** *This section shall not apply to any of the following:*

2 **(1)** *An individual who has been relieved under Section 290.5 of*
3 *the Penal Code of his or her duty to register as a sex offender, or*
4 *whose duty to register has otherwise been formally terminated*
5 *under California law or the law of the jurisdiction that requires*
6 *his or her registration as a sex offender.*

7 **(2)** *An individual who is required to register as a sex offender*
8 *pursuant to Section 290 of the Penal Code solely because of a*
9 *misdemeanor conviction under Section 314 of the Penal Code.*
10 *However, nothing in this paragraph shall prohibit the board from*
11 *exercising its discretion to discipline a licensee under any other*
12 *provision of state law based upon the licensee's conviction under*
13 *Section 314 of the Penal Code.*

14 **(3)** *Any administrative adjudication proceeding under Chapter*
15 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
16 *2 of the Government Code that is fully adjudicated prior to January*
17 *1, 2008. A petition for reinstatement of a revoked or surrendered*
18 *license shall be considered a new proceeding for purposes of this*
19 *paragraph, and the prohibition against reinstating a certificate of*
20 *registration to an individual who is required to register as a sex*
21 *offender shall be applicable.*

22 **SEC. 100.** *Section 3112.5 is added to the Business and*
23 *Professions Code, to read:*

24 **3112.5.** *(a) Notwithstanding any other provision of law making*
25 *a communication between a registrant and his or her patients a*
26 *privileged communication, those provisions shall not apply to*
27 *investigations or proceedings conducted by the board. Members*
28 *of the board, deputies, employees, agents, the office of the Attorney*
29 *General, and representatives of the board shall keep in confidence*
30 *during the course of investigations the names of any patients whose*
31 *records are reviewed and may not disclose or reveal those names,*
32 *except as is necessary during the course of an investigation, unless*
33 *and until proceedings are instituted. The authority under this*
34 *subdivision to examine records of patients in the office of a licensee*
35 *is limited to records of patients who have complained to the board*
36 *about that licensee.*

37 **(b)** *Notwithstanding any other provision of law, the Attorney*
38 *General and his or her investigative agents, and the board and its*
39 *investigators and representatives may inquire into any alleged*
40 *violation of the laws under the jurisdiction of the board or any*

1 *other federal or state law, regulation, or rule relevant to the*
2 *practice regulated by the board, whichever is applicable, and may*
3 *inspect documents relevant to those investigations in accordance*
4 *with the following procedures:*

5 *(1) Any document relevant to an investigation may be inspected,*
6 *and copies may be obtained, where a patient provides written*
7 *authorization.*

8 *(2) Any document relevant to the business operations of a*
9 *registrant, and not involving medical records attributable to*
10 *identifiable patients, may be inspected and copied where relevant*
11 *to an investigation of a licensee.*

12 *(c) In all cases where documents are inspected or copies of*
13 *those documents are received, their acquisition or review shall be*
14 *arranged so as not to unnecessarily disrupt the medical and*
15 *business operations of the registrant or of the facility where the*
16 *records are kept or used.*

17 *(d) Where certified documents are lawfully requested from*
18 *registrants in accordance with this section by the Attorney General*
19 *or his or her agents or deputies, or investigators of any board, the*
20 *documents shall be provided within 10 business days of receipt of*
21 *the request, unless the registrant is unable to provide the certified*
22 *documents within this time period for good cause, including, but*
23 *not limited to, physical inability to access the records in the time*
24 *allowed due to illness or travel. Failure to produce requested*
25 *certified documents or copies thereof, after being informed of the*
26 *required deadline, shall constitute unprofessional conduct. A board*
27 *may use its authority to cite and fine a registrant for any violation*
28 *of this section. This remedy is in addition to any other authority*
29 *of the board to sanction a licensee for a delay in producing*
30 *requested records.*

31 *(e) Searches conducted of the office or medical facility of any*
32 *licensee shall not interfere with the recordkeeping format or*
33 *preservation needs of any licensee necessary for the lawful care*
34 *of patients.*

35 *(f) The registrant shall cooperate with the board in furnishing*
36 *information or assistance as may be required, including, but not*
37 *limited to, participation in an interview with investigators or*
38 *representatives of the board.*

39 *(g) This section shall not apply to a licensee who does not have*
40 *access to, and control over, certified medical records or other*

1 types of documents that belong to or are controlled by a health
2 facility or clinic.

3 SEC. 101. Section 3112.6 is added to the Business and
4 Professions Code, to read:

5 3112.6. (a) (1) Notwithstanding any other provision of law,
6 a registrant who fails or refuses to comply with a request for the
7 certified medical records of a patient that is accompanied by that
8 patient's written authorization for release of records to a board
9 together with a notice citing this section and describing the
10 penalties for failure to comply with this section shall be required
11 to pay to the board a civil penalty of up to one thousand dollars
12 (\$1,000) per day for each day that the documents have not been
13 produced after the 15th day, up to ten thousand dollars (\$10,000),
14 unless the registrant is unable to provide the documents within
15 this time period for good cause.

16 (2) A health care facility shall comply with a request for the
17 certified medical records of a patient that is accompanied by that
18 patient's written authorization for release of records to a board
19 together with a notice citing this section and describing the
20 penalties for failure to comply with this section. Failure to provide
21 the authorizing patient's certified medical records to the board
22 within 15 days of receiving the request, authorization, and notice
23 shall subject the health care facility to a civil penalty, payable to
24 the board, of up to one thousand dollars (\$1,000) per day for each
25 day that the documents have not been produced after the 15th day,
26 up to ten thousand dollars (\$10,000), unless the health care facility
27 is unable to provide the documents within this time period for good
28 cause. This paragraph shall not require health care facilities to
29 assist the board in obtaining the patient's authorization. The board
30 shall pay the reasonable costs of copying the certified medical
31 records, but shall not be required to make that payment prior to
32 the production of the medical records.

33 (b) (1) A registrant who fails or refuses to comply with a court
34 order, issued in the enforcement of a subpoena, mandating the
35 release of records to the board, shall pay to the board a civil
36 penalty of up to one thousand dollars (\$1,000) per day for each
37 day that the documents have not been produced after the date by
38 which the court order requires the documents to be produced, up
39 to ten thousand dollars (\$10,000), unless it is determined that the
40 order is unlawful or invalid. Any statute of limitations applicable

1 *to the filing of an accusation by the board shall be tolled during*
2 *the period the licensee is out of compliance with the court order*
3 *and during any related appeals.*

4 *(2) Any licensee who fails or refuses to comply with a court*
5 *order, issued in the enforcement of a subpoena, mandating the*
6 *release of records to a board is guilty of a misdemeanor punishable*
7 *by a fine payable to the board not to exceed five thousand dollars*
8 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
9 *it is not paid by the next succeeding renewal date. Any statute of*
10 *limitations applicable to the filing of an accusation by the board*
11 *shall be tolled during the period the licensee is out of compliance*
12 *with the court order and during any related appeals.*

13 *(3) A health care facility that fails or refuses to comply with a*
14 *court order, issued in the enforcement of a subpoena, mandating*
15 *the release of patient records to the board, that is accompanied*
16 *by a notice citing this section and describing the penalties for*
17 *failure to comply with this section, shall pay to the board a civil*
18 *penalty of up to one thousand dollars (\$1,000) per day for each*
19 *day that the documents have not been produced, up to ten thousand*
20 *dollars (\$10,000), after the date by which the court order requires*
21 *the documents to be produced, unless it is determined that the*
22 *order is unlawful or invalid. Any statute of limitations applicable*
23 *to the filing of an accusation by the board against a licensee shall*
24 *be tolled during the period the health care facility is out of*
25 *compliance with the court order and during any related appeals.*

26 *(4) Any health care facility that fails or refuses to comply with*
27 *a court order, issued in the enforcement of a subpoena, mandating*
28 *the release of records to the board is guilty of a misdemeanor*
29 *punishable by a fine payable to the board not to exceed five*
30 *thousand dollars (\$5,000). Any statute of limitations applicable*
31 *to the filing of an accusation by the board against a registrant*
32 *shall be tolled during the period the health care facility is out of*
33 *compliance with the court order and during any related appeals.*

34 *(c) Multiple acts by a licensee in violation of subdivision (b)*
35 *shall be punishable by a fine not to exceed five thousand dollars*
36 *(\$5,000) or by imprisonment in a county jail not exceeding six*
37 *months, or by both that fine and imprisonment. Multiple acts by*
38 *a health care facility in violation of subdivision (b) shall be*
39 *punishable by a fine not to exceed five thousand dollars (\$5,000),*
40 *shall be reported to the State Department of Public Health, and*

1 *shall be considered as grounds for disciplinary action with respect*
2 *to licensure, including suspension or revocation of the certificate.*

3 *(d) A failure or refusal of a registrant to comply with a court*
4 *order, issued in the enforcement of a subpoena, mandating the*
5 *release of records to the board constitutes unprofessional conduct*
6 *and is grounds for suspension or revocation of his or her*
7 *certificate.*

8 *(e) Imposition of the civil penalties authorized by this section*
9 *shall be in accordance with the Administrative Procedure Act*
10 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
11 *2 of the Government Code). Any civil penalties paid to, or received*
12 *by, the board pursuant to this section shall be deposited into the*
13 *fund administered by the board.*

14 *(f) For purposes of this section, “certified medical records”*
15 *means a copy of the patient’s medical records authenticated by*
16 *the licensee or health care facility, as appropriate, on a form*
17 *prescribed by the licensee’s board.*

18 *(g) For purposes of this section, a “health care facility” means*
19 *a clinic or health facility licensed or exempt from licensure*
20 *pursuant to Division 2 (commencing with Section 1200) of the*
21 *Health and Safety Code.*

22 *(h) If a board complies with Section 1684.1, 2225.5, or 2969,*
23 *that board shall not be subject to the requirements of this section.*

24 *(i) This section shall not apply to a registrant who does not have*
25 *access to, or control over, certified medical records or other types*
26 *of documents that belong to or are controlled by a health facility*
27 *or clinic.*

28 *SEC. 102. Section 3112.7 is added to the Business and*
29 *Professions Code, to read:*

30 *3112.7. (a) Notwithstanding any other provision of law, any*
31 *employer of a licensee shall report to the board the suspension or*
32 *termination for cause, or any resignation in lieu of suspension or*
33 *termination for cause, of any licensee in its employ within 15*
34 *business days. The report shall not be made until after the*
35 *conclusion of the review process specified in Section 52.3 of Title*
36 *2 of the California Code of Regulations and Skelly v. State*
37 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
38 *required reporting shall not constitute a waiver of confidentiality*
39 *of medical records. The information reported or disclosed shall*

1 *be kept confidential except as provided in subdivision (c) of Section*
2 *800 and shall not be subject to discovery in civil cases.*

3 *(b) The information to be reported by the employer shall include*
4 *the name and license number of the licensee involved, a*
5 *description of the facts and circumstances of the suspension or*
6 *termination for cause, any resignation in lieu of suspension or*
7 *termination for cause, and any other relevant information deemed*
8 *appropriate by the employer.*

9 *(c) The board shall be entitled to inspect and copy the following*
10 *documents in the record for any suspension or termination for*
11 *cause, or any resignation in lieu of suspension or termination for*
12 *cause, resulting in action that is required to be reported pursuant*
13 *to this section:*

14 *(1) Any statement for suspension or termination of the registrant.*

15 *(2) Any document or exhibits relevant to the suspension or*
16 *termination.*

17 *(d) If, during the investigation by the board of the cause for the*
18 *termination or suspension or resignation of the registrant, it is*
19 *found that there has been a violation of existing state or federal*
20 *law, the board shall report the violation to the appropriate agency.*

21 *(e) For purposes of this section, “suspension or termination for*
22 *cause” or “resignation in lieu of suspension or termination for*
23 *cause” is defined as resignation, suspension, or termination from*
24 *employment for any of the following reasons:*

25 *(1) Use of controlled substances or alcohol to the extent that it*
26 *impairs the licensee’s ability to safely practice.*

27 *(2) Unlawful sale of a controlled substance or other prescription*
28 *items.*

29 *(3) Patient or client abuse, neglect, physical harm, or sexual*
30 *contact with a patient or client.*

31 *(4) Gross negligence or incompetence.*

32 *(5) Theft from a patient or client, any other employee, or the*
33 *employer.*

34 *(f) As used in this section, the following definitions apply:*

35 *(1) “Gross negligence” means a substantial departure from the*
36 *standard of care, which, under similar circumstances, would have*
37 *ordinarily been exercised by a competent licensee, and which has*
38 *or could have resulted in harm to the consumer. An exercise of so*
39 *slight a degree of care as to justify the belief that there was a*
40 *conscious disregard or indifference for the health, safety, or*

1 *welfare of the consumer shall be considered a substantial departure*
2 *from the standard of care.*

3 (2) *“Incompetence” means the lack of possession of, and the*
4 *failure to exercise that degree of learning, skill, care, and*
5 *experience ordinarily possessed by, a responsible licensee.*

6 (3) *“Willful” means a knowing and intentional violation of a*
7 *known legal duty.*

8 (g) (1) *Willful failure of an employer to make a report required*
9 *by this section is punishable by an administrative fine not to exceed*
10 *one hundred thousand dollars (\$100,000) per violation.*

11 (2) *Any failure of an employer, other than willful failure, to*
12 *make a report required by this section is punishable by an*
13 *administrative fine not to exceed fifty thousand dollars (\$50,000).*

14 (h) *The board shall investigate the circumstances underlying*
15 *any report received pursuant to this section within 30 days to*
16 *determine if an interim suspension order or temporary restraining*
17 *order should be issued. The board shall otherwise provide timely*
18 *disposition of the reports received pursuant to this section.*

19 (i) *The board shall send to the licentiate a copy of the report*
20 *along with the reasons for the filing of the report and notice*
21 *advising the licentiate of his or her right to submit additional*
22 *statements or other information to the board.*

23 (j) *Pursuant to Section 43.8 of the Civil Code, no person shall*
24 *incur any civil penalty as a result of making any report required*
25 *by this article.*

26 (k) *No report is required under this section where a report of*
27 *the action taken is already required under Section 805.*

28 SEC. 103. *Section 3112.8 is added to the Business and*
29 *Professions Code, to read:*

30 3112.8. *Unless otherwise provided, on or after July 1, 2013,*
31 *the board shall post on its Internet Web site the following*
32 *information, including the name and license number, in its*
33 *possession, custody, or control regarding every registrant for*
34 *which the board licenses:*

35 (a) *With regard to the status of every registrant, whether or not*
36 *the registrant or former registrant is in good standing, subject to*
37 *a temporary restraining order, subject to an interim suspension*
38 *order, subject to a restriction or cease practice ordered pursuant*
39 *to Section 23 of the Penal Code, or subject to any of the*
40 *enforcement actions described in Section 803.1.*

1 (b) With regard to prior discipline of a registrant, whether or
2 not the registrant or former registrant has been subject to discipline
3 by the board or by the board of another state or jurisdiction, as
4 described in Section 803.1.

5 (c) Any felony conviction of a registrant reported to the board.

6 (d) All current accusations filed by the Attorney General,
7 including those accusations that are on appeal. For purposes of
8 this paragraph, “current accusation” means an accusation that
9 has not been dismissed, withdrawn, or settled, and has not been
10 finally decided upon by an administrative law judge and the board
11 unless an appeal of that decision is pending.

12 (e) Any malpractice judgment or arbitration award imposed
13 against a licensee and reported to the board.

14 (f) Any hospital disciplinary action imposed against a registrant
15 that resulted in the termination or revocation of a registrant’s
16 hospital staff privileges for a medical disciplinary cause or reason
17 pursuant to Section 3112.6 or 805.

18 (g) Any misdemeanor conviction of a registrant that results in
19 a disciplinary action or an accusation that is not subsequently
20 withdrawn or dismissed.

21 (h) Appropriate disclaimers and explanatory statements to
22 accompany the above information, including an explanation of
23 what types of information are not disclosed. These disclaimers
24 and statements shall be developed by the board and shall be
25 adopted by regulation.

26 (i) The information provided on the Internet shall be in
27 accordance with the California Public Records Act (Chapter 3.5
28 (commencing with Section 6250) of Division 7 of Title 1 of the
29 Government Code) and the Information Practices Act of 1977
30 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
31 of Division 3 of the Civil Code) and shall comply with the
32 Department of Consumer Affairs Guidelines for Access to Public
33 Records.

34 (j) Information provided on the Internet may not include
35 personal information, unless otherwise provided pursuant to this
36 chapter, including the home telephone number, date of birth, or
37 social security number. The information may not include the
38 licensee’s address, but may include the city and county of the
39 licensee’s address of record.

1 SEC. 104. Section 3112.9 is added to the Business and
2 Professions Code, to read:

3 3112.9. (a) Unless otherwise provided, if a registrant possesses
4 a license or is otherwise authorized to practice in any state other
5 than California or by any agency of the federal government and
6 that license or authority is suspended or revoked outright, the
7 California license of the licensee shall be suspended automatically
8 for the duration of the suspension or revocation, unless terminated
9 or rescinded as provided in subdivision (c). The board shall notify
10 the licensee of the license suspension and of his or her right to
11 have the issue of penalty heard as provided in this section.

12 (b) Upon its own motion or for good cause shown, the board
13 may decline to impose or may set aside the suspension when it
14 appears to be in the interest of justice to do so, with due regard
15 to maintaining the integrity of, and confidence in, the specific
16 healing art.

17 (c) The issue of penalty shall be heard by an administrative law
18 judge sitting alone or with a panel of the board, in the discretion
19 of the board. A licensee may request a hearing on the penalty and
20 that hearing shall be held within 90 days from the date of the
21 request. If the order suspending or revoking the certificate or
22 authority to practice is overturned on appeal, any discipline
23 ordered pursuant to this section shall automatically cease. Upon
24 a showing to the administrative law judge or panel by the licensee
25 that the out-of-state action is not a basis for discipline in
26 California, the suspension shall be rescinded. If an accusation for
27 permanent discipline is not filed within 90 days of the suspension
28 imposed pursuant to this section, the suspension shall automatically
29 terminate.

30 (d) The record of the proceedings that resulted in the suspension
31 or revocation of the licensee's out-of-state license or authority to
32 practice, including a transcript of the testimony therein, may be
33 received in evidence.

34 (e) This section shall not apply to a registrant who maintains
35 his or her primary practice in California, as evidenced by having
36 maintained a practice in this state for not less than one year
37 immediately preceding the date of suspension or revocation.
38 Nothing in this section shall preclude a registrant's license from
39 being suspended pursuant to any other provision of law.

1 (f) *This section shall not apply to a registrant whose license has*
2 *been surrendered, whose only discipline is a medical staff*
3 *disciplinary action at a federal hospital and not for medical*
4 *disciplinary cause or reason as that term is defined in Section 805,*
5 *or whose revocation or suspension has been stayed, even if the*
6 *licensee remains subject to terms of probation or other discipline.*

7 (g) *This section shall not apply to a suspension or revocation*
8 *imposed by a state that is based solely on the prior discipline of*
9 *the registrant by another state.*

10 (h) *The other provisions of this article setting forth a procedure*
11 *for the suspension or revocation of a licensee's license or*
12 *certificate shall not apply to summary suspensions issued pursuant*
13 *to this section. If a summary suspension has been issued pursuant*
14 *to this section, the licensee may request that the hearing on the*
15 *penalty conducted pursuant to subdivision (c) be held at the same*
16 *time as a hearing on the accusation.*

17 (i) *A board that complies with Section 2310 shall not be subject*
18 *to the requirements of this section.*

19 SEC. 105. *Section 3405 is added to the Business and*
20 *Professions Code, to read:*

21 3405. (a) *The board may delegate to its executive officer the*
22 *authority to adopt a proposed default decision where an*
23 *administrative action to revoke a license has been filed and the*
24 *licensee has failed to file a notice of defense or to appear at the*
25 *hearing and a proposed default decision revoking the license has*
26 *been issued.*

27 (b) *The board may delegate to its executive officer the authority*
28 *to adopt a proposed settlement agreement where an administrative*
29 *action to revoke a license has been filed by the board and the*
30 *licensee has agreed to the revocation or surrender of his or her*
31 *license.*

32 (c) *The executive officer shall, at scheduled board meetings,*
33 *report to the board the number of proposed default decisions or*
34 *proposed settlement agreements adopted pursuant to this section.*

35 SEC. 106. *Section 3405.1 is added to the Business and*
36 *Professions Code, to read:*

37 3405.1. (a) *Notwithstanding Section 11415.60 of the*
38 *Government Code, the board may enter into a settlement with a*
39 *licensee or applicant in lieu of the issuance of an accusation or*
40 *statement of issues against that licensee or applicant, as applicable.*

1 (b) *The settlement shall include language identifying the factual*
2 *basis for the action being taken and a list of the statutes or*
3 *regulations violated.*

4 (c) *A person who enters a settlement pursuant to this section is*
5 *not precluded from filing a petition, in the timeframe permitted by*
6 *law, to modify the terms of the settlement or petition for early*
7 *termination of probation, if probation is part of the settlement.*

8 (d) *Any settlement against a licensee executed pursuant to this*
9 *section shall be considered discipline and a public record and*
10 *shall be posted on the applicable board's Internet Web site. Any*
11 *settlement against an applicant executed pursuant to this section*
12 *shall be considered a public record and shall be posted on the*
13 *applicable board's Internet Web site.*

14 (e) *The executive officer shall, at scheduled board meetings,*
15 *report to the board the number of proposed settlement agreements*
16 *adopted pursuant to this section.*

17 SEC. 107. *Section 3405.2 is added to the Business and*
18 *Professions Code, to read:*

19 3405.2. (a) *The license of a licensee shall be suspended*
20 *automatically during any time that the licensee is incarcerated*
21 *after conviction of a felony, regardless of whether the conviction*
22 *has been appealed. The board shall, immediately upon receipt of*
23 *the certified copy of the record of conviction, determine whether*
24 *the license of the licensee has been automatically suspended by*
25 *virtue of his or her incarceration, and if so, the duration of that*
26 *suspension. The board shall notify the licensee in writing of the*
27 *license suspension and of his or her right to elect to have the issue*
28 *of penalty heard as provided in subdivision (d).*

29 (b) *Upon receipt of the certified copy of the record of conviction,*
30 *if after a hearing before an administrative law judge from the*
31 *Office of Administrative Hearings it is determined that the felony*
32 *for which the licensee was convicted was substantially related to*
33 *the qualifications, functions, or duties of a licensee, the board*
34 *shall suspend the license until the time for appeal has elapsed, if*
35 *no appeal has been taken, or until the judgment of conviction has*
36 *been affirmed on appeal or has otherwise become final, and until*
37 *further order of the board.*

38 (c) *Notwithstanding subdivision (b), a conviction of a charge*
39 *of violating any federal statute or regulation or any statute or*
40 *regulation of this state, regulating dangerous drugs or controlled*

1 substances, or a conviction of Section 187, 261, 262, or 288 of the
2 Penal Code, shall be conclusively presumed to be substantially
3 related to the qualifications, functions, or duties of a licensee and
4 no hearing shall be held on this issue. However, upon its own
5 motion or for good cause shown, the board may decline to impose
6 or may set aside the suspension when it appears to be in the interest
7 of justice to do so, with due regard to maintaining the integrity of,
8 and confidence in, the practice regulated by the board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the statutes and regulations of the board when
11 the time for appeal has elapsed, the judgment of conviction has
12 been affirmed on appeal, or an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent
14 order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

18 (2) The issue of penalty shall be heard by an administrative law
19 judge from the Office of Administrative Hearings. The hearing
20 shall not be had until the judgment of conviction has become final
21 or, irrespective of a subsequent order under Section 1203.4 of the
22 Penal Code, an order granting probation has been made
23 suspending the imposition of sentence; except that a licensee may,
24 at his or her option, elect to have the issue of penalty decided
25 before those time periods have elapsed. Where the licensee so
26 elects, the issue of penalty shall be heard in the manner described
27 in subdivision (b) at the hearing to determine whether the
28 conviction was substantially related to the qualifications, functions,
29 or duties of a licensee. If the conviction of a licensee who has made
30 this election is overturned on appeal, any discipline ordered
31 pursuant to this section shall automatically cease. Nothing in this
32 subdivision shall prohibit the board from pursuing disciplinary
33 action based on any cause other than the overturned conviction.

34 (e) The record of the proceedings resulting in a conviction,
35 including a transcript of the testimony in those proceedings, may
36 be received in evidence.

37 (f) Any other provision of law setting forth a procedure for the
38 suspension or revocation of a license issued by the board shall not
39 apply to proceedings conducted pursuant to this section.

1 SEC. 108. Section 3405.3 is added to the Business and
2 Professions Code, to read:

3 3405.3. (a) Except as otherwise provided, any proposed
4 decision or decision issued in accordance with the procedures set
5 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, that contains any
7 finding of fact that the licensee engaged in any act of sexual contact
8 with a patient, as defined in subdivision (c) of Section 729, or any
9 finding that the licensee has committed a sex offense, shall contain
10 an order revoking the license. The proposed decision shall not
11 contain any order staying the revocation of the licensee.

12 (b) As used in this section, the term sex offense shall mean any
13 of the following:

14 (1) Any offense for which registration is required by Section
15 290 of the Penal Code or a finding that a person committed such
16 an act.

17 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
18 or 647(a) or (d) of the Penal Code or a finding that a person
19 committed such an act.

20 (3) Any attempt to commit any of the offenses specified in this
21 section.

22 (4) Any offense committed or attempted in any other state or
23 against the laws of the United States which, if committed or
24 attempted in this state, would have been punishable as one or more
25 of the offenses specified in this section.

26 SEC. 109. Section 3405.4 is added to the Business and
27 Professions Code, to read:

28 3405.4. (a) Except as otherwise provided, with regard to an
29 individual who is required to register as a sex offender pursuant
30 to Section 290 of the Penal Code, or the equivalent in another
31 state or territory, under military law, or under federal law, the
32 board shall be subject to the following requirements:

33 (1) The board shall deny an application by the individual for
34 licensure in accordance with the procedures set forth in Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (2) If the individual is licensed under this chapter, the board
38 shall promptly revoke the license of the individual in accordance
39 with the procedures set forth in Chapter 5 (commencing with
40 Section 11500) of Part 1 of Division 3 of Title 2 of the Government

1 *Code. The board shall not stay the revocation and place the license*
2 *on probation.*

3 *(3) The board shall not reinstate or reissue the individual's*
4 *license. The board shall not issue a stay of license denial nor place*
5 *the license on probation.*

6 *(b) This section shall not apply to any of the following:*

7 *(1) An individual who has been relieved under Section 290.5 of*
8 *the Penal Code of his or her duty to register as a sex offender, or*
9 *whose duty to register has otherwise been formally terminated*
10 *under California law or the law of the jurisdiction that requires*
11 *his or her registration as a sex offender.*

12 *(2) An individual who is required to register as a sex offender*
13 *pursuant to Section 290 of the Penal Code solely because of a*
14 *misdemeanor conviction under Section 314 of the Penal Code.*
15 *However, nothing in this paragraph shall prohibit the board from*
16 *exercising its discretion to discipline a licensee under any other*
17 *provision of state law based upon the licensee's conviction under*
18 *Section 314 of the Penal Code.*

19 *(3) Any administrative adjudication proceeding under Chapter*
20 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
21 *2 of the Government Code that is fully adjudicated prior to January*
22 *1, 2008. A petition for reinstatement of a revoked or surrendered*
23 *license shall be considered a new proceeding for purposes of this*
24 *paragraph, and the prohibition against reinstating a license to an*
25 *individual who is required to register as a sex offender shall be*
26 *applicable.*

27 *SEC. 110. Section 3405.5 is added to the Business and*
28 *Professions Code, to read:*

29 *3405.5. (a) Notwithstanding any other provision of law making*
30 *a communication between a licensee and his or her patients a*
31 *privileged communication, those provisions shall not apply to*
32 *investigations or proceedings conducted by the board. Members*
33 *of the board, deputies, employees, agents, the office of the Attorney*
34 *General, and representatives of the board shall keep in confidence*
35 *during the course of investigations the names of any patients whose*
36 *records are reviewed and may not disclose or reveal those names,*
37 *except as is necessary during the course of an investigation, unless*
38 *and until proceedings are instituted. The authority under this*
39 *subdivision to examine records of patients in the office of a licensee*

1 *is limited to records of patients who have complained to the board*
2 *about that licensee.*

3 *(b) Notwithstanding any other provision of law, the Attorney*
4 *General and his or her investigative agents, and the board and its*
5 *investigators and representatives may inquire into any alleged*
6 *violation of the laws under the jurisdiction of the board or any*
7 *other federal or state law, regulation, or rule relevant to the*
8 *practice regulated by the board, whichever is applicable, and may*
9 *inspect documents relevant to those investigations in accordance*
10 *with the following procedures:*

11 *(1) Any document relevant to an investigation may be inspected,*
12 *and copies may be obtained, where a patient provides written*
13 *authorization.*

14 *(2) Any document relevant to the business operations of a*
15 *licensee, and not involving medical records attributable to*
16 *identifiable patients, may be inspected and copied where relevant*
17 *to an investigation of a licensee.*

18 *(c) In all cases where documents are inspected or copies of*
19 *those documents are received, their acquisition or review shall be*
20 *arranged so as not to unnecessarily disrupt the medical and*
21 *business operations of the licensee or of the facility where the*
22 *records are kept or used.*

23 *(d) Where certified documents are lawfully requested from*
24 *licensees in accordance with this section by the Attorney General*
25 *or his or her agents or deputies, or investigators of any board, the*
26 *documents shall be provided within 10 business days of receipt of*
27 *the request, unless the licensee is unable to provide the certified*
28 *documents within this time period for good cause, including, but*
29 *not limited to, physical inability to access the records in the time*
30 *allowed due to illness or travel. Failure to produce requested*
31 *certified documents or copies thereof, after being informed of the*
32 *required deadline, shall constitute unprofessional conduct. A board*
33 *may use its authority to cite and fine a licensee for any violation*
34 *of this section. This remedy is in addition to any other authority*
35 *of the board to sanction a licensee for a delay in producing*
36 *requested records.*

37 *(e) Searches conducted of the office or medical facility of any*
38 *licensee shall not interfere with the recordkeeping format or*
39 *preservation needs of any licensee necessary for the lawful care*
40 *of patients.*

1 (f) *The licensee shall cooperate with the board in furnishing*
2 *information or assistance as may be required, including, but not*
3 *limited to, participation in an interview with investigators or*
4 *representatives of the board.*

5 (g) *This section shall not apply to a licensee who does not have*
6 *access to, and control over, certified medical records or other*
7 *types of documents that belong to or are controlled by a health*
8 *facility or clinic.*

9 *SEC. 111. Section 3405.6 is added to the Business and*
10 *Professions Code, to read:*

11 3405.6. (a) (1) *Notwithstanding any other provision of law,*
12 *a licensee who fails or refuses to comply with a request for the*
13 *certified medical records of a patient that is accompanied by that*
14 *patient's written authorization for release of records to the board*
15 *together with a notice citing this section and describing the*
16 *penalties for failure to comply with this section shall be required*
17 *to pay to the board a civil penalty of up to one thousand dollars*
18 *(\$1,000) per day for each day that the documents have not been*
19 *produced after the 15th day, up to ten thousand dollars (\$10,000),*
20 *unless the licensee is unable to provide the documents within this*
21 *time period for good cause.*

22 (2) *A health care facility shall comply with a request for the*
23 *certified medical records of a patient that is accompanied by that*
24 *patient's written authorization for release of records to the board*
25 *together with a notice citing this section and describing the*
26 *penalties for failure to comply with this section. Failure to provide*
27 *the authorizing patient's certified medical records to the board*
28 *within 15 days of receiving the request, authorization, and notice*
29 *shall subject the health care facility to a civil penalty, payable to*
30 *the board, of up to one thousand dollars (\$1,000) per day for each*
31 *day that the documents have not been produced after the 15th day,*
32 *up to ten thousand dollars (\$10,000), unless the health care facility*
33 *is unable to provide the documents within this time period for good*
34 *cause. This paragraph shall not require health care facilities to*
35 *assist a board in obtaining the patient's authorization. The board*
36 *shall pay the reasonable costs of copying the certified medical*
37 *records, but shall not be required to make that payment prior to*
38 *the production of the medical records.*

39 (b) (1) *A licensee who fails or refuses to comply with a court*
40 *order, issued in the enforcement of a subpoena, mandating the*

1 release of records to the board, shall pay to the board a civil
2 penalty of up to one thousand dollars (\$1,000) per day for each
3 day that the documents have not been produced after the date by
4 which the court order requires the documents to be produced, up
5 to ten thousand dollars (\$10,000), unless it is determined that the
6 order is unlawful or invalid. Any statute of limitations applicable
7 to the filing of an accusation by the board shall be tolled during
8 the period the licensee is out of compliance with the court order
9 and during any related appeals.

10 (2) Any licensee who fails or refuses to comply with a court
11 order, issued in the enforcement of a subpoena, mandating the
12 release of records to a board is guilty of a misdemeanor punishable
13 by a fine payable to the board not to exceed five thousand dollars
14 (\$5,000). The fine shall be added to the licensee's renewal fee if
15 it is not paid by the next succeeding renewal date. Any statute of
16 limitations applicable to the filing of an accusation by the board
17 shall be tolled during the period the licensee is out of compliance
18 with the court order and during any related appeals.

19 (3) A health care facility that fails or refuses to comply with a
20 court order, issued in the enforcement of a subpoena, mandating
21 the release of patient records to the board, that is accompanied
22 by a notice citing this section and describing the penalties for
23 failure to comply with this section, shall pay to the board a civil
24 penalty of up to one thousand dollars (\$1,000) per day for each
25 day that the documents have not been produced, up to ten thousand
26 dollars (\$10,000), after the date by which the court order requires
27 the documents to be produced, unless it is determined that the
28 order is unlawful or invalid. Any statute of limitations applicable
29 to the filing of an accusation by the board against a licensee shall
30 be tolled during the period the health care facility is out of
31 compliance with the court order and during any related appeals.

32 (4) Any health care facility that fails or refuses to comply with
33 a court order, issued in the enforcement of a subpoena, mandating
34 the release of records to the board is guilty of a misdemeanor
35 punishable by a fine payable to the board not to exceed five
36 thousand dollars (\$5,000). Any statute of limitations applicable
37 to the filing of an accusation by the board against a licensee shall
38 be tolled during the period the health care facility is out of
39 compliance with the court order and during any related appeals.

1 (c) Multiple acts by a licensee in violation of subdivision (b)
2 shall be punishable by a fine not to exceed five thousand dollars
3 (\$5,000) or by imprisonment in a county jail not exceeding six
4 months, or by both that fine and imprisonment. Multiple acts by
5 a health care facility in violation of subdivision (b) shall be
6 punishable by a fine not to exceed five thousand dollars (\$5,000),
7 shall be reported to the State Department of Public Health, and
8 shall be considered as grounds for disciplinary action with respect
9 to licensure, including suspension or revocation of the license or
10 certificate.

11 (d) A failure or refusal of a licensee to comply with a court
12 order, issued in the enforcement of a subpoena, mandating the
13 release of records to the board constitutes unprofessional conduct
14 and is grounds for suspension or revocation of his or her license.

15 (e) Imposition of the civil penalties authorized by this section
16 shall be in accordance with the Administrative Procedure Act
17 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
18 2 of the Government Code). Any civil penalties paid to, or received
19 by, a board pursuant to this section shall be deposited into the
20 fund administered by the board.

21 (f) For purposes of this section, “certified medical records”
22 means a copy of the patient’s medical records authenticated by
23 the licensee or health care facility, as appropriate, on a form
24 prescribed by the licensee’s board.

25 (g) For purposes of this section, a “health care facility” means
26 a clinic or health facility licensed or exempt from licensure
27 pursuant to Division 2 (commencing with Section 1200) of the
28 Health and Safety Code.

29 (h) If a board complies with Section 1684.1, 2225.5, or 2969,
30 that board shall not be subject to the requirements of this section.

31 (i) This section shall not apply to a licensee who does not have
32 access to, or control over, certified medical records.

33 SEC. 112. Section 3405.7 is added to the Business and
34 Professions Code, to read:

35 3405.7. (a) Notwithstanding any other provision of law, any
36 employer of a licensee shall report to the board the suspension or
37 termination for cause, or any resignation in lieu of suspension or
38 termination for cause, of any licensee in its employ within 15
39 business days. The report shall not be made until after the
40 conclusion of the review process specified in Section 52.3 of Title

2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) “Gross negligence” means a substantial departure from the standard of care, which, under similar circumstances, would have

1 *ordinarily been exercised by a competent licensee, and which has*
2 *or could have resulted in harm to the consumer. An exercise of so*
3 *slight a degree of care as to justify the belief that there was a*
4 *conscious disregard or indifference for the health, safety, or*
5 *welfare of the consumer shall be considered a substantial departure*
6 *from the standard of care.*

7 (2) *“Incompetence” means the lack of possession of, and the*
8 *failure to exercise that degree of learning, skill, care, and*
9 *experience ordinarily possessed by, a responsible licensee.*

10 (3) *“Willful” means a knowing and intentional violation of a*
11 *known legal duty.*

12 (g) (1) *Willful failure of an employer to make a report required*
13 *by this section is punishable by an administrative fine not to exceed*
14 *one hundred thousand dollars (\$100,000) per violation.*

15 (2) *Any failure of an employer, other than willful failure, to*
16 *make a report required by this section is punishable by an*
17 *administrative fine not to exceed fifty thousand dollars (\$50,000).*

18 (h) *The board shall investigate the circumstances underlying*
19 *any report received pursuant to this section within 30 days to*
20 *determine if an interim suspension order or temporary restraining*
21 *order should be issued. The board shall otherwise provide timely*
22 *disposition of the reports received pursuant to this section.*

23 (i) *The board shall send to the licentiate a copy of the report*
24 *along with the reasons for the filing of the report and notice*
25 *advising the licentiate of his or her right to submit additional*
26 *statements or other information to the board.*

27 (j) *Pursuant to Section 43.8 of the Civil Code, no person shall*
28 *incur any civil penalty as a result of making any report required*
29 *by this article.*

30 (k) *No report is required under this section where a report of*
31 *the action taken is already required under Section 805.*

32 SEC. 113. *Section 3405.8 is added to the Business and*
33 *Professions Code, to read:*

34 3405.8. *Unless otherwise provided, on or after July 1, 2013,*
35 *the board shall post on its Internet Web site the following*
36 *information, including the name and license number, in its*
37 *possession, custody, or control regarding every licensee for which*
38 *the board licenses:*

39 (a) *With regard to the status of every license, whether or not*
40 *the licensee or former licensee is in good standing, subject to a*

1 temporary restraining order; subject to an interim suspension
2 order; subject to a restriction or cease practice ordered pursuant
3 to Section 23 of the Penal Code, or subject to any of the
4 enforcement actions described in Section 803.1.

5 (b) With regard to prior discipline of a licensee, whether or not
6 the licensee or former licensee has been subject to discipline by
7 the board or by the board of another state or jurisdiction, as
8 described in Section 803.1.

9 (c) Any felony conviction of a licensee reported to the board.

10 (d) All current accusations filed by the Attorney General,
11 including those accusations that are on appeal. For purposes of
12 this paragraph, “current accusation” means an accusation that
13 has not been dismissed, withdrawn, or settled, and has not been
14 finally decided upon by an administrative law judge and the board
15 unless an appeal of that decision is pending.

16 (e) Any malpractice judgment or arbitration award imposed
17 against a licensee and reported to the healing arts board.

18 (f) Any hospital disciplinary action imposed against a licensee
19 that resulted in the termination or revocation of a licensee’s
20 hospital staff privileges for a medical disciplinary cause or reason
21 pursuant to Section 3405.6 or 805.

22 (g) Any misdemeanor conviction of a licensee that results in a
23 disciplinary action or an accusation that is not subsequently
24 withdrawn or dismissed.

25 (h) Appropriate disclaimers and explanatory statements to
26 accompany the above information, including an explanation of
27 what types of information are not disclosed. These disclaimers
28 and statements shall be developed by the board and shall be
29 adopted by regulation.

30 (i) The information provided on the Internet shall be in
31 accordance with the California Public Records Act (Chapter 3.5
32 (commencing with Section 6250) of Division 7 of Title 1 of the
33 Government Code) and the Information Practices Act of 1977
34 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
35 of Division 3 of the Civil Code) and shall comply with the
36 Department of Consumer Affairs Guidelines for Access to Public
37 Records.

38 (j) Information provided on the Internet may not include
39 personal information, unless otherwise provided pursuant to this
40 chapter, including the home telephone number, date of birth, or

1 *social security number. The information may not include the*
2 *licensee's address, but may include the city and county of the*
3 *licensee's address of record.*

4 *SEC. 114. Section 3405.9 is added to the Business and*
5 *Professions Code, to read:*

6 *3405.9. (a) Unless otherwise provided, if a licensee possesses*
7 *a license or is otherwise authorized to practice in any state other*
8 *than California or by any agency of the federal government and*
9 *that license or authority is suspended or revoked outright, the*
10 *California license of the licensee shall be suspended automatically*
11 *for the duration of the suspension or revocation, unless terminated*
12 *or rescinded as provided in subdivision (c). The healing arts board*
13 *shall notify the licensee of the license suspension and of his or her*
14 *right to have the issue of penalty heard as provided in this section.*

15 *(b) Upon its own motion or for good cause shown, the board*
16 *may decline to impose or may set aside the suspension when it*
17 *appears to be in the interest of justice to do so, with due regard*
18 *to maintaining the integrity of, and confidence in, the specific*
19 *healing art.*

20 *(c) The issue of penalty shall be heard by an administrative law*
21 *judge sitting alone or with a panel of the board, in the discretion*
22 *of the board. A licensee may request a hearing on the penalty and*
23 *that hearing shall be held within 90 days from the date of the*
24 *request. If the order suspending or revoking the license or authority*
25 *to practice is overturned on appeal, any discipline ordered*
26 *pursuant to this section shall automatically cease. Upon a showing*
27 *to the administrative law judge or panel by the licensee that the*
28 *out-of-state action is not a basis for discipline in California, the*
29 *suspension shall be rescinded. If an accusation for permanent*
30 *discipline is not filed within 90 days of the suspension imposed*
31 *pursuant to this section, the suspension shall automatically*
32 *terminate.*

33 *(d) The record of the proceedings that resulted in the suspension*
34 *or revocation of the licensee's out-of-state license or authority to*
35 *practice, including a transcript of the testimony therein, may be*
36 *received in evidence.*

37 *(e) This section shall not apply to a licensee who maintains his*
38 *or her primary practice in California, as evidenced by having*
39 *maintained a practice in this state for not less than one year*
40 *immediately preceding the date of suspension or revocation.*

1 *Nothing in this section shall preclude a licensee's license from*
2 *being suspended pursuant to any other provision of law.*

3 *(f) This section shall not apply to a licensee whose license has*
4 *been surrendered, whose only discipline is a medical staff*
5 *disciplinary action at a federal hospital and not for medical*
6 *disciplinary cause or reason as that term is defined in Section 805,*
7 *or whose revocation or suspension has been stayed, even if the*
8 *licensee remains subject to terms of probation or other discipline.*

9 *(g) This section shall not apply to a suspension or revocation*
10 *imposed by a state that is based solely on the prior discipline of*
11 *the licensee by another state.*

12 *(h) The other provisions of this article setting forth a procedure*
13 *for the suspension or revocation of a licensee's license or*
14 *certificate shall not apply to summary suspensions issued pursuant*
15 *to this section. If a summary suspension has been issued pursuant*
16 *to this section, the licensee may request that the hearing on the*
17 *penalty conducted pursuant to subdivision (c) be held at the same*
18 *time as a hearing on the accusation.*

19 *(i) A board that complies with Section 2310 shall not be subject*
20 *to the requirements of this section.*

21 *SEC. 115. Section 3531.1 is added to the Business and*
22 *Professions Code, to read:*

23 *3531.1. (a) The committee may delegate to its executive officer*
24 *the authority to adopt a proposed default decision where an*
25 *administrative action to revoke a license has been filed and the*
26 *licensee has failed to file a notice of defense or to appear at the*
27 *hearing and a proposed default decision revoking the license has*
28 *been issued.*

29 *(b) The committee may delegate to its executive officer the*
30 *authority to adopt a proposed settlement agreement where an*
31 *administrative action to revoke a license has been filed by the*
32 *committee and the licensee has agreed to the revocation or*
33 *surrender of his or her license.*

34 *(c) The executive officer shall, at scheduled committee meetings,*
35 *report to the committee the number of proposed default decisions*
36 *or proposed settlement agreements adopted pursuant to this*
37 *section.*

38 *SEC. 116. Section 3531.2 is added to the Business and*
39 *Professions Code, to read:*

1 3531.2. (a) Notwithstanding Section 11415.60 of the
2 Government Code, the committee may enter into a settlement with
3 a licensee or applicant in lieu of the issuance of an accusation or
4 statement of issues against that licensee or applicant, as applicable.

5 (b) The settlement shall include language identifying the factual
6 basis for the action being taken and a list of the statutes or
7 regulations violated.

8 (c) A person who enters a settlement pursuant to this section is
9 not precluded from filing a petition, in the timeframe permitted by
10 law, to modify the terms of the settlement or petition for early
11 termination of probation, if probation is part of the settlement.

12 (d) Any settlement against a licensee executed pursuant to this
13 section shall be considered discipline and a public record and
14 shall be posted on the applicable committee's Internet Web site.
15 Any settlement against an applicant executed pursuant to this
16 section shall be considered a public record and shall be posted
17 on the applicable committee's Internet Web site.

18 (e) The executive officer shall, at scheduled committee meetings,
19 report to the committee the number of proposed settlement
20 agreements adopted pursuant to this section.

21 SEC. 117. Section 3531.3 is added to the Business and
22 Professions Code, to read:

23 3531.3. (a) The license of a licensee shall be suspended
24 automatically during any time that the licensee is incarcerated
25 after conviction of a felony, regardless of whether the conviction
26 has been appealed. The committee shall, immediately upon receipt
27 of the certified copy of the record of conviction, determine whether
28 the license of the licensee has been automatically suspended by
29 virtue of his or her incarceration, and if so, the duration of that
30 suspension. The committee shall notify the licensee in writing of
31 the license suspension and of his or her right to elect to have the
32 issue of penalty heard as provided in subdivision (d).

33 (b) Upon receipt of the certified copy of the record of conviction,
34 if after a hearing before an administrative law judge from the
35 Office of Administrative Hearings it is determined that the felony
36 for which the licensee was convicted was substantially related to
37 the qualifications, functions, or duties of a licensee, the committee
38 shall suspend the license until the time for appeal has elapsed, if
39 no appeal has been taken, or until the judgment of conviction has

1 *been affirmed on appeal or has otherwise become final, and until*
2 *further order of the committee.*

3 *(c) Notwithstanding subdivision (b), a conviction of a charge*
4 *of violating any federal statute or regulation or any statute or*
5 *regulation of this state, regulating dangerous drugs or controlled*
6 *substances, or a conviction of Section 187, 261, 262, or 288 of the*
7 *Penal Code, shall be conclusively presumed to be substantially*
8 *related to the qualifications, functions, or duties of a licensee and*
9 *no hearing shall be held on this issue. However, upon its own*
10 *motion or for good cause shown, the committee may decline to*
11 *impose or may set aside the suspension when it appears to be in*
12 *the interest of justice to do so, with due regard to maintaining the*
13 *integrity of, and confidence in, the practice regulated by the*
14 *committee.*

15 *(d) (1) Discipline may be ordered against a licensee in*
16 *accordance with the statutes and regulations of the committee*
17 *when the time for appeal has elapsed, the judgment of conviction*
18 *has been affirmed on appeal, or an order granting probation is*
19 *made suspending the imposition of sentence, irrespective of a*
20 *subsequent order under Section 1203.4 of the Penal Code allowing*
21 *the person to withdraw his or her plea of guilty and to enter a plea*
22 *of not guilty, setting aside the verdict of guilty, or dismissing the*
23 *accusation, complaint, information, or indictment.*

24 *(2) The issue of penalty shall be heard by an administrative law*
25 *judge from the Office of Administrative Hearings. The hearing*
26 *shall not be had until the judgment of conviction has become final*
27 *or, irrespective of a subsequent order under Section 1203.4 of the*
28 *Penal Code, an order granting probation has been made*
29 *suspending the imposition of sentence; except that a licensee may,*
30 *at his or her option, elect to have the issue of penalty decided*
31 *before those time periods have elapsed. Where the licensee so*
32 *elects, the issue of penalty shall be heard in the manner described*
33 *in subdivision (b) at the hearing to determine whether the*
34 *conviction was substantially related to the qualifications, functions,*
35 *or duties of a licensee. If the conviction of a licensee who has made*
36 *this election is overturned on appeal, any discipline ordered*
37 *pursuant to this section shall automatically cease. Nothing in this*
38 *subdivision shall prohibit the committee from pursuing disciplinary*
39 *action based on any cause other than the overturned conviction.*

1 (e) *The record of the proceedings resulting in a conviction,*
2 *including a transcript of the testimony in those proceedings, may*
3 *be received in evidence.*

4 (f) *Any other provision of law setting forth a procedure for the*
5 *suspension or revocation of a license issued by the committee shall*
6 *not apply to proceedings conducted pursuant to this section.*

7 SEC. 118. *Section 3531.4 is added to the Business and*
8 *Professions Code, to read:*

9 3531.4. (a) *Except as otherwise provided, any proposed*
10 *decision or decision issued in accordance with the procedures set*
11 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
12 *Division 3 of Title 2 of the Government Code, that contains any*
13 *finding of fact that the licensee engaged in any act of sexual contact*
14 *with a patient, as defined in subdivision (c) of Section 729, or any*
15 *finding that the licensee has committed a sex offense, shall contain*
16 *an order revoking the license. The proposed decision shall not*
17 *contain any order staying the revocation of the licensee.*

18 (b) *As used in this section, the term sex offense shall mean any*
19 *of the following:*

20 (1) *Any offense for which registration is required by Section*
21 *290 of the Penal Code or a finding that a person committed such*
22 *an act.*

23 (2) *Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
24 *or 647(a) or (d) of the Penal Code or a finding that a person*
25 *committed such an act.*

26 (3) *Any attempt to commit any of the offenses specified in this*
27 *section.*

28 (4) *Any offense committed or attempted in any other state or*
29 *against the laws of the United States which, if committed or*
30 *attempted in this state, would have been punishable as one or more*
31 *of the offenses specified in this section.*

32 SEC. 119. *Section 3531.5 is added to the Business and*
33 *Professions Code, to read:*

34 3531.5. (a) *Except as otherwise provided, with regard to an*
35 *individual who is required to register as a sex offender pursuant*
36 *to Section 290 of the Penal Code, or the equivalent in another*
37 *state or territory, under military law, or under federal law, the*
38 *committee shall be subject to the following requirements:*

39 (1) *The committee shall deny an application by the individual*
40 *for licensure in accordance with the procedures set forth in*

1 Chapter 5 (commencing with Section 11500) of Part 1 of Division
2 3 of Title 2 of the Government Code.

3 (2) If the individual is licensed under this chapter, the committee
4 shall promptly revoke the license of the individual in accordance
5 with the procedures set forth in Chapter 5 (commencing with
6 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
7 Code. The committee shall not stay the revocation and place the
8 license on probation.

9 (3) The committee shall not reinstate or reissue the individual's
10 license. The committee shall not issue a stay of license denial nor
11 place the license on probation.

12 (b) This section shall not apply to any of the following:

13 (1) An individual who has been relieved under Section 290.5 of
14 the Penal Code of his or her duty to register as a sex offender, or
15 whose duty to register has otherwise been formally terminated
16 under California law or the law of the jurisdiction that requires
17 his or her registration as a sex offender.

18 (2) An individual who is required to register as a sex offender
19 pursuant to Section 290 of the Penal Code solely because of a
20 misdemeanor conviction under Section 314 of the Penal Code.
21 However, nothing in this paragraph shall prohibit the committee
22 from exercising its discretion to discipline a licensee under any
23 other provision of state law based upon the licensee's conviction
24 under Section 314 of the Penal Code.

25 (3) Any administrative adjudication proceeding under Chapter
26 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
27 2 of the Government Code that is fully adjudicated prior to January
28 1, 2008. A petition for reinstatement of a revoked or surrendered
29 license shall be considered a new proceeding for purposes of this
30 paragraph, and the prohibition against reinstating a license to an
31 individual who is required to register as a sex offender shall be
32 applicable.

33 SEC. 120. Section 3531.6 is added to the Business and
34 Professions Code, to read:

35 3531.6. (a) Notwithstanding any other provision of law making
36 a communication between a licensee and his or her patients a
37 privileged communication, those provisions shall not apply to
38 investigations or proceedings conducted by the committee.
39 Members of the committee, deputies, employees, agents, the office
40 of the Attorney General, and representatives of the committee shall

1 *keep in confidence during the course of investigations the names*
2 *of any patients whose records are reviewed and may not disclose*
3 *or reveal those names, except as is necessary during the course*
4 *of an investigation, unless and until proceedings are instituted.*
5 *The authority under this subdivision to examine records of patients*
6 *in the office of a licensee is limited to records of patients who have*
7 *complained to the committee about that licensee.*

8 *(b) Notwithstanding any other provision of law, the Attorney*
9 *General and his or her investigative agents, and the committee*
10 *and its investigators and representatives may inquire into any*
11 *alleged violation of the laws under the jurisdiction of the committee*
12 *or any other federal or state law, regulation, or rule relevant to*
13 *the practice regulated by the committee, whichever is applicable,*
14 *and may inspect documents relevant to those investigations in*
15 *accordance with the following procedures:*

16 *(1) Any document relevant to an investigation may be inspected,*
17 *and copies may be obtained, where a patient provides written*
18 *authorization.*

19 *(2) Any document relevant to the business operations of a*
20 *licensee, and not involving medical records attributable to*
21 *identifiable patients, may be inspected and copied where relevant*
22 *to an investigation of a licensee.*

23 *(c) In all cases where documents are inspected or copies of*
24 *those documents are received, their acquisition or review shall be*
25 *arranged so as not to unnecessarily disrupt the medical and*
26 *business operations of the licensee or of the facility where the*
27 *records are kept or used.*

28 *(d) Where certified documents are lawfully requested from*
29 *licensees in accordance with this section by the Attorney General*
30 *or his or her agents or deputies, or investigators of the committee,*
31 *the documents shall be provided within 10 business days of receipt*
32 *of the request, unless the licensee is unable to provide the certified*
33 *documents within this time period for good cause, including, but*
34 *not limited to, physical inability to access the records in the time*
35 *allowed due to illness or travel. Failure to produce requested*
36 *certified documents or copies thereof, after being informed of the*
37 *required deadline, shall constitute unprofessional conduct. The*
38 *committee may use its authority to cite and fine a licensee for any*
39 *violation of this section. This remedy is in addition to any other*

1 authority of the committee to sanction a licensee for a delay in
2 producing requested records.

3 (e) Searches conducted of the office or medical facility of any
4 licensee shall not interfere with the recordkeeping format or
5 preservation needs of any licensee necessary for the lawful care
6 of patients.

7 (f) The licensee shall cooperate with the committee in furnishing
8 information or assistance as may be required, including, but not
9 limited to, participation in an interview with investigators or
10 representatives of the committee.

11 (g) This section shall not apply to a licensee who does not have
12 access to, and control over, certified medical records or other
13 types of documents that belong to or are controlled by a health
14 facility or clinic.

15 SEC. 121. Section 3531.7 is added to the Business and
16 Professions Code, to read:

17 3531.7. (a) (1) Notwithstanding any other provision of law,
18 a licensee who fails or refuses to comply with a request for the
19 certified medical records of a patient that is accompanied by that
20 patient's written authorization for release of records to the
21 committee together with a notice citing this section and describing
22 the penalties for failure to comply with this section shall be
23 required to pay to the committee a civil penalty of up to one
24 thousand dollars (\$1,000) per day for each day that the documents
25 have not been produced after the 15th day, up to ten thousand
26 dollars (\$10,000), unless the licensee is unable to provide the
27 documents within this time period for good cause.

28 (2) A health care facility shall comply with a request for the
29 certified medical records of a patient that is accompanied by that
30 patient's written authorization for release of records to the
31 committee together with a notice citing this section and describing
32 the penalties for failure to comply with this section. Failure to
33 provide the authorizing patient's certified medical records to the
34 committee within 15 days of receiving the request, authorization,
35 and notice shall subject the health care facility to a civil penalty,
36 payable to the committee, of up to one thousand dollars (\$1,000)
37 per day for each day that the documents have not been produced
38 after the 15th day, up to ten thousand dollars (\$10,000), unless
39 the health care facility is unable to provide the documents within
40 this time period for good cause. This paragraph shall not require

1 health care facilities to assist the committee in obtaining the
2 patient's authorization. The committee shall pay the reasonable
3 costs of copying the certified medical records, but shall not be
4 required to make that payment prior to the production of the
5 medical records.

6 (b) (1) A licensee who fails or refuses to comply with a court
7 order, issued in the enforcement of a subpoena, mandating the
8 release of records to the committee, shall pay to the committee a
9 civil penalty of up to one thousand dollars (\$1,000) per day for
10 each day that the documents have not been produced after the date
11 by which the court order requires the documents to be produced,
12 up to ten thousand dollars (\$10,000), unless it is determined that
13 the order is unlawful or invalid. Any statute of limitations
14 applicable to the filing of an accusation by the committee shall be
15 tolled during the period the licensee is out of compliance with the
16 court order and during any related appeals.

17 (2) Any licensee who fails or refuses to comply with a court
18 order, issued in the enforcement of a subpoena, mandating the
19 release of records to the committee is guilty of a misdemeanor
20 punishable by a fine payable to the committee not to exceed five
21 thousand dollars (\$5,000). The fine shall be added to the licensee's
22 renewal fee if it is not paid by the next succeeding renewal date.
23 Any statute of limitations applicable to the filing of an accusation
24 by the committee shall be tolled during the period the licensee is
25 out of compliance with the court order and during any related
26 appeals.

27 (3) A health care facility that fails or refuses to comply with a
28 court order, issued in the enforcement of a subpoena, mandating
29 the release of patient records to the committee, that is accompanied
30 by a notice citing this section and describing the penalties for
31 failure to comply with this section, shall pay to the committee a
32 civil penalty of up to one thousand dollars (\$1,000) per day for
33 each day that the documents have not been produced, up to ten
34 thousand dollars (\$10,000), after the date by which the court order
35 requires the documents to be produced, unless it is determined
36 that the order is unlawful or invalid. Any statute of limitations
37 applicable to the filing of an accusation by the committee against
38 a licensee shall be tolled during the period the health care facility
39 is out of compliance with the court order and during any related
40 appeals.

1 (4) Any health care facility that fails or refuses to comply with
2 a court order, issued in the enforcement of a subpoena, mandating
3 the release of records to the committee is guilty of a misdemeanor
4 punishable by a fine payable to the committee not to exceed five
5 thousand dollars (\$5,000). Any statute of limitations applicable
6 to the filing of an accusation by the committee against a licensee
7 shall be tolled during the period the health care facility is out of
8 compliance with the court order and during any related appeals.

9 (c) Multiple acts by a licensee in violation of subdivision (b)
10 shall be punishable by a fine not to exceed five thousand dollars
11 (\$5,000) or by imprisonment in a county jail not exceeding six
12 months, or by both that fine and imprisonment. Multiple acts by
13 a health care facility in violation of subdivision (b) shall be
14 punishable by a fine not to exceed five thousand dollars (\$5,000),
15 shall be reported to the State Department of Public Health, and
16 shall be considered as grounds for disciplinary action with respect
17 to licensure, including suspension or revocation of the license or
18 certificate.

19 (d) A failure or refusal of a licensee to comply with a court
20 order, issued in the enforcement of a subpoena, mandating the
21 release of records to the committee constitutes unprofessional
22 conduct and is grounds for suspension or revocation of his or her
23 license.

24 (e) Imposition of the civil penalties authorized by this section
25 shall be in accordance with the Administrative Procedure Act
26 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
27 2 of the Government Code). Any civil penalties paid to, or received
28 by, the committee pursuant to this section shall be deposited into
29 the fund administered by the committee.

30 (f) For purposes of this section, “certified medical records”
31 means a copy of the patient’s medical records authenticated by
32 the licensee or health care facility, as appropriate, on a form
33 prescribed by the committee.

34 (g) For purposes of this section, a “health care facility” means
35 a clinic or health facility licensed or exempt from licensure
36 pursuant to Division 2 (commencing with Section 1200) of the
37 Health and Safety Code.

38 (h) If the committee complies with Section 1684.1, 2225.5, or
39 2969, the committee shall not be subject to the requirements of
40 this section.

1 (i) *This section shall not apply to a licensee who does not have*
2 *access to, or control over, certified medical records or other types*
3 *of documents that belong to or are controlled by a health facility*
4 *or clinic.*

5 SEC. 122. *Section 3531.8 is added to the Business and*
6 *Professions Code, to read:*

7 3531.8. (a) *Notwithstanding any other provision of law, any*
8 *employer of a licensee shall report to the committee the suspension*
9 *or termination for cause, or any resignation in lieu of suspension*
10 *or termination for cause, of any licensee in its employ within 15*
11 *business days. The report shall not be made until after the*
12 *conclusion of the review process specified in Section 52.3 of Title*
13 *2 of the California Code of Regulations and Skelly v. State*
14 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
15 *required reporting shall not constitute a waiver of confidentiality*
16 *of medical records. The information reported or disclosed shall*
17 *be kept confidential except as provided in subdivision (c) of Section*
18 *800 and shall not be subject to discovery in civil cases.*

19 (b) *The information to be reported by the employer shall include*
20 *the name and license number of the licensee involved, a*
21 *description of the facts and circumstances of the suspension or*
22 *termination for cause, any resignation in lieu of suspension or*
23 *termination for cause, and any other relevant information deemed*
24 *appropriate by the employer.*

25 (c) *The committee shall be entitled to inspect and copy the*
26 *following documents in the record for any suspension or*
27 *termination for cause, or any resignation in lieu of suspension or*
28 *termination for cause, resulting in action that is required to be*
29 *reported pursuant to this section:*

30 (1) *Any statement for suspension or termination of the licensee.*

31 (2) *Any document or exhibits relevant to the suspension or*
32 *termination.*

33 (d) *If, during the investigation by the committee of the cause*
34 *for the termination or suspension or resignation of the licensee,*
35 *it is found that there has been a violation of existing state or federal*
36 *law, the committee shall report the violation to the appropriate*
37 *agency.*

38 (e) *For purposes of this section, “suspension or termination for*
39 *cause” or “resignation in lieu of suspension or termination for*

1 *cause” is defined as resignation, suspension, or termination from*
2 *employment for any of the following reasons:*

3 *(1) Use of controlled substances or alcohol to the extent that it*
4 *impairs the licensee’s ability to safely practice.*

5 *(2) Unlawful sale of a controlled substance or other prescription*
6 *items.*

7 *(3) Patient or client abuse, neglect, physical harm, or sexual*
8 *contact with a patient or client.*

9 *(4) Gross negligence or incompetence.*

10 *(5) Theft from a patient or client, any other employee, or the*
11 *employer.*

12 *(f) As used in this section, the following definitions apply:*

13 *(1) “Gross negligence” means a substantial departure from the*
14 *standard of care, which, under similar circumstances, would have*
15 *ordinarily been exercised by a competent licensee, and which has*
16 *or could have resulted in harm to the consumer. An exercise of so*
17 *slight a degree of care as to justify the belief that there was a*
18 *conscious disregard or indifference for the health, safety, or*
19 *welfare of the consumer shall be considered a substantial departure*
20 *from the standard of care.*

21 *(2) “Incompetence” means the lack of possession of, and the*
22 *failure to exercise that degree of learning, skill, care, and*
23 *experience ordinarily possessed by, a responsible licensee.*

24 *(3) “Willful” means a knowing and intentional violation of a*
25 *known legal duty.*

26 *(g) (1) Willful failure of an employer to make a report required*
27 *by this section is punishable by an administrative fine not to exceed*
28 *one hundred thousand dollars (\$100,000) per violation.*

29 *(2) Any failure of an employer, other than willful failure, to*
30 *make a report required by this section is punishable by an*
31 *administrative fine not to exceed fifty thousand dollars (\$50,000).*

32 *(h) The committee shall investigate the circumstances underlying*
33 *any report received pursuant to this section within 30 days to*
34 *determine if an interim suspension order or temporary restraining*
35 *order should be issued. The committee shall otherwise provide*
36 *timely disposition of the reports received pursuant to this section.*

37 *(i) The committee shall send to the licentiate a copy of the report*
38 *along with the reasons for the filing of the report and notice*
39 *advising the licentiate of his or her right to submit additional*
40 *statements or other information to the committee.*

1 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
2 incur any civil penalty as a result of making any report required
3 by this article.

4 (k) No report is required under this section where a report of
5 the action taken is already required under Section 805.

6 SEC. 123. Section 3531.9 is added to the Business and
7 Professions Code, to read:

8 3531.9. Unless otherwise provided, on or after July 1, 2013,
9 the committee shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the committee licenses:

13 (a) With regard to the status of every license, whether or not
14 the licensee or former licensee is in good standing, subject to a
15 temporary restraining order, subject to an interim suspension
16 order, subject to a restriction or cease practice ordered pursuant
17 to Section 23 of the Penal Code, or subject to any of the
18 enforcement actions described in Section 803.1.

19 (b) With regard to prior discipline of a licensee, whether or not
20 the licensee or former licensee has been subject to discipline by
21 the board or by the committee of another state or jurisdiction, as
22 described in Section 803.1.

23 (c) Any felony conviction of a licensee reported to the committee.

24 (d) All current accusations filed by the Attorney General,
25 including those accusations that are on appeal. For purposes of
26 this paragraph, “current accusation” means an accusation that
27 has not been dismissed, withdrawn, or settled, and has not been
28 finally decided upon by an administrative law judge and the
29 committee unless an appeal of that decision is pending.

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the committee.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee’s
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 3531.7 or 805.

36 (g) Any misdemeanor conviction of a licensee that results in a
37 disciplinary action or an accusation that is not subsequently
38 withdrawn or dismissed.

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 *what types of information are not disclosed. These disclaimers*
2 *and statements shall be developed by the committee and shall be*
3 *adopted by regulation.*

4 *(i) The information provided on the Internet shall be in*
5 *accordance with the California Public Records Act (Chapter 3.5*
6 *(commencing with Section 6250) of Division 7 of Title 1 of the*
7 *Government Code) and the Information Practices Act of 1977*
8 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
9 *of Division 3 of the Civil Code) and shall comply with the*
10 *Department of Consumer Affairs Guidelines for Access to Public*
11 *Records.*

12 *(j) Information provided on the Internet may not include*
13 *personal information, unless otherwise provided pursuant to this*
14 *chapter, including the home telephone number, date of birth, or*
15 *social security number. The information may not include the*
16 *licensee's address, but may include the city and county of the*
17 *licensee's address of record.*

18 *SEC. 124. Section 3531.10 is added to the Business and*
19 *Professions Code, to read:*

20 *3531.10. (a) Unless otherwise provided, if a licensee possesses*
21 *a license or is otherwise authorized to practice in any state other*
22 *than California or by any agency of the federal government and*
23 *that license or authority is suspended or revoked outright, the*
24 *California license of the licensee shall be suspended automatically*
25 *for the duration of the suspension or revocation, unless terminated*
26 *or rescinded as provided in subdivision (c). The committee shall*
27 *notify the licensee of the license suspension and of his or her right*
28 *to have the issue of penalty heard as provided in this section.*

29 *(b) Upon its own motion or for good cause shown, the committee*
30 *may decline to impose or may set aside the suspension when it*
31 *appears to be in the interest of justice to do so, with due regard*
32 *to maintaining the integrity of, and confidence in, the specific*
33 *healing art.*

34 *(c) The issue of penalty shall be heard by an administrative law*
35 *judge sitting alone or with a panel of the committee, in the*
36 *discretion of the committee. A licensee may request a hearing on*
37 *the penalty and that hearing shall be held within 90 days from the*
38 *date of the request. If the order suspending or revoking the license*
39 *or authority to practice is overturned on appeal, any discipline*
40 *ordered pursuant to this section shall automatically cease. Upon*

1 a showing to the administrative law judge or panel by the licensee
2 that the out-of-state action is not a basis for discipline in
3 California, the suspension shall be rescinded. If an accusation for
4 permanent discipline is not filed within 90 days of the suspension
5 imposed pursuant to this section, the suspension shall automatically
6 terminate.

7 (d) The record of the proceedings that resulted in the suspension
8 or revocation of the licensee's out-of-state license or authority to
9 practice, including a transcript of the testimony therein, may be
10 received in evidence.

11 (e) This section shall not apply to a licensee who maintains his
12 or her primary practice in California, as evidenced by having
13 maintained a practice in this state for not less than one year
14 immediately preceding the date of suspension or revocation.
15 Nothing in this section shall preclude a licensee's license from
16 being suspended pursuant to any other provision of law.

17 (f) This section shall not apply to a licensee whose license has
18 been surrendered, whose only discipline is a medical staff
19 disciplinary action at a federal hospital and not for medical
20 disciplinary cause or reason as that term is defined in Section 805,
21 or whose revocation or suspension has been stayed, even if the
22 licensee remains subject to terms of probation or other discipline.

23 (g) This section shall not apply to a suspension or revocation
24 imposed by a state that is based solely on the prior discipline of
25 the licensee by another state.

26 (h) The other provisions of this article setting forth a procedure
27 for the suspension or revocation of a licensee's license or
28 certificate shall not apply to summary suspensions issued pursuant
29 to this section. If a summary suspension has been issued pursuant
30 to this section, the licensee may request that the hearing on the
31 penalty conducted pursuant to subdivision (c) be held at the same
32 time as a hearing on the accusation.

33 (i) If the committee complies with Section 2310 it shall not be
34 subject to the requirements of this section.

35 SEC. 125. Section 3665 is added to the Business and
36 Professions Code, to read:

37 3665. (a) The committee may delegate to its executive officer
38 the authority to adopt a proposed default decision where an
39 administrative action to revoke a license has been filed and the
40 licensee has failed to file a notice of defense or to appear at the

1 *hearing and a proposed default decision revoking the license has*
2 *been issued.*

3 *(b) The committee may delegate to its executive officer the*
4 *authority to adopt a proposed settlement agreement where an*
5 *administrative action to revoke a license has been filed by the*
6 *committee and the licensee has agreed to the revocation or*
7 *surrender of his or her license.*

8 *(c) The executive officer shall, at scheduled committee meetings,*
9 *report to the committee the number of proposed default decisions*
10 *or proposed settlement agreements adopted pursuant to this*
11 *section.*

12 *SEC. 126. Section 3665.1 is added to the Business and*
13 *Professions Code, to read:*

14 *3665.1. (a) Notwithstanding Section 11415.60 of the*
15 *Government Code, the committee may enter into a settlement with*
16 *a licensee or applicant in lieu of the issuance of an accusation or*
17 *statement of issues against that licensee or applicant, as applicable.*

18 *(b) The settlement shall include language identifying the factual*
19 *basis for the action being taken and a list of the statutes or*
20 *regulations violated.*

21 *(c) A person who enters a settlement pursuant to this section is*
22 *not precluded from filing a petition, in the timeframe permitted by*
23 *law, to modify the terms of the settlement or petition for early*
24 *termination of probation, if probation is part of the settlement.*

25 *(d) Any settlement against a licensee executed pursuant to this*
26 *section shall be considered discipline and a public record and*
27 *shall be posted on the applicable committee's Internet Web site.*
28 *Any settlement against an applicant executed pursuant to this*
29 *section shall be considered a public record and shall be posted*
30 *on the applicable committee's Internet Web site.*

31 *(e) The executive officer shall, at scheduled committee meetings,*
32 *report to the committee the number of proposed settlement*
33 *agreements adopted pursuant to this section.*

34 *SEC. 127. Section 3665.2 is added to the Business and*
35 *Professions Code, to read:*

36 *3665.2. (a) The license of a licensee shall be suspended*
37 *automatically during any time that the licensee is incarcerated*
38 *after conviction of a felony, regardless of whether the conviction*
39 *has been appealed. The committee shall, immediately upon receipt*
40 *of the certified copy of the record of conviction, determine whether*

1 *the license of the licensee has been automatically suspended by*
2 *virtue of his or her incarceration, and if so, the duration of that*
3 *suspension. The committee shall notify the licensee in writing of*
4 *the license suspension and of his or her right to elect to have the*
5 *issue of penalty heard as provided in subdivision (d).*

6 *(b) Upon receipt of the certified copy of the record of conviction,*
7 *if after a hearing before an administrative law judge from the*
8 *Office of Administrative Hearings it is determined that the felony*
9 *for which the licensee was convicted was substantially related to*
10 *the qualifications, functions, or duties of a licensee, the committee*
11 *shall suspend the license until the time for appeal has elapsed, if*
12 *no appeal has been taken, or until the judgment of conviction has*
13 *been affirmed on appeal or has otherwise become final, and until*
14 *further order of the committee.*

15 *(c) Notwithstanding subdivision (b), a conviction of a charge*
16 *of violating any federal statute or regulation or any statute or*
17 *regulation of this state, regulating dangerous drugs or controlled*
18 *substances, or a conviction of Section 187, 261, 262, or 288 of the*
19 *Penal Code, shall be conclusively presumed to be substantially*
20 *related to the qualifications, functions, or duties of a licensee and*
21 *no hearing shall be held on this issue. However, upon its own*
22 *motion or for good cause shown, the committee may decline to*
23 *impose or may set aside the suspension when it appears to be in*
24 *the interest of justice to do so, with due regard to maintaining the*
25 *integrity of, and confidence in, the practice regulated by the*
26 *committee.*

27 *(d) (1) Discipline may be ordered against a licensee in*
28 *accordance with the statutes and regulations of the committee*
29 *when the time for appeal has elapsed, the judgment of conviction*
30 *has been affirmed on appeal, or an order granting probation is*
31 *made suspending the imposition of sentence, irrespective of a*
32 *subsequent order under Section 1203.4 of the Penal Code allowing*
33 *the person to withdraw his or her plea of guilty and to enter a plea*
34 *of not guilty, setting aside the verdict of guilty, or dismissing the*
35 *accusation, complaint, information, or indictment.*

36 *(2) The issue of penalty shall be heard by an administrative law*
37 *judge from the Office of Administrative Hearings. The hearing*
38 *shall not be had until the judgment of conviction has become final*
39 *or, irrespective of a subsequent order under Section 1203.4 of the*
40 *Penal Code, an order granting probation has been made*

1 *suspending the imposition of sentence; except that a licensee may,*
2 *at his or her option, elect to have the issue of penalty decided*
3 *before those time periods have elapsed. Where the licensee so*
4 *elects, the issue of penalty shall be heard in the manner described*
5 *in subdivision (b) at the hearing to determine whether the*
6 *conviction was substantially related to the qualifications, functions,*
7 *or duties of a licensee. If the conviction of a licensee who has made*
8 *this election is overturned on appeal, any discipline ordered*
9 *pursuant to this section shall automatically cease. Nothing in this*
10 *subdivision shall prohibit the board from pursuing disciplinary*
11 *action based on any cause other than the overturned conviction.*

12 *(e) The record of the proceedings resulting in a conviction,*
13 *including a transcript of the testimony in those proceedings, may*
14 *be received in evidence.*

15 *(f) Any other provision of law setting forth a procedure for the*
16 *suspension or revocation of a license issued by the board shall not*
17 *apply to proceedings conducted pursuant to this section.*

18 *SEC. 128. Section 3665.3 is added to the Business and*
19 *Professions Code, to read:*

20 *3665.3. (a) Except as otherwise provided, any proposed*
21 *decision or decision issued in accordance with the procedures set*
22 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
23 *Division 3 of Title 2 of the Government Code, that contains any*
24 *finding of fact that the licensee engaged in any act of sexual contact*
25 *with a patient, as defined in subdivision (c) of Section 729, or any*
26 *finding that the licensee has committed a sex offense, shall contain*
27 *an order revoking the license. The proposed decision shall not*
28 *contain any order staying the revocation of the licensee.*

29 *(b) As used in this section, the term sex offense shall mean any*
30 *of the following:*

31 *(1) Any offense for which registration is required by Section*
32 *290 of the Penal Code or a finding that a person committed such*
33 *an act.*

34 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
35 *or 647(a) or (d) of the Penal Code or a finding that a person*
36 *committed such an act.*

37 *(3) Any attempt to commit any of the offenses specified in this*
38 *section.*

39 *(4) Any offense committed or attempted in any other state or*
40 *against the laws of the United States which, if committed or*

1 *attempted in this state, would have been punishable as one or more*
2 *of the offenses specified in this section.*

3 *SEC. 129. Section 3665.4 is added to the Business and*
4 *Professions Code, to read:*

5 *3665.4. (a) Except as otherwise provided, with regard to an*
6 *individual who is required to register as a sex offender pursuant*
7 *to Section 290 of the Penal Code, or the equivalent in another*
8 *state or territory, under military law, or under federal law, the*
9 *committee shall be subject to the following requirements:*

10 *(1) The committee shall deny an application by the individual*
11 *for licensure in accordance with the procedures set forth in*
12 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
13 *3 of Title 2 of the Government Code.*

14 *(2) If the individual is licensed under this chapter, the committee*
15 *shall promptly revoke the license of the individual in accordance*
16 *with the procedures set forth in Chapter 5 (commencing with*
17 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
18 *Code. The committee shall not stay the revocation and place the*
19 *license on probation.*

20 *(3) The committee shall not reinstate or reissue the individual's*
21 *license. The board shall not issue a stay of license denial nor place*
22 *the license on probation.*

23 *(b) This section shall not apply to any of the following:*

24 *(1) An individual who has been relieved under Section 290.5 of*
25 *the Penal Code of his or her duty to register as a sex offender, or*
26 *whose duty to register has otherwise been formally terminated*
27 *under California law or the law of the jurisdiction that requires*
28 *his or her registration as a sex offender.*

29 *(2) An individual who is required to register as a sex offender*
30 *pursuant to Section 290 of the Penal Code solely because of a*
31 *misdemeanor conviction under Section 314 of the Penal Code.*
32 *However, nothing in this paragraph shall prohibit the committee*
33 *from exercising its discretion to discipline a licensee under any*
34 *other provision of state law based upon the licensee's conviction*
35 *under Section 314 of the Penal Code.*

36 *(3) Any administrative adjudication proceeding under Chapter*
37 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
38 *2 of the Government Code that is fully adjudicated prior to January*
39 *1, 2008. A petition for reinstatement of a revoked or surrendered*
40 *license shall be considered a new proceeding for purposes of this*

1 *paragraph, and the prohibition against reinstating a license to an*
2 *individual who is required to register as a sex offender shall be*
3 *applicable.*

4 *SEC. 130. Section 3665.5 is added to the Business and*
5 *Professions Code, to read:*

6 *3665.5. (a) Notwithstanding any other provision of law making*
7 *a communication between a licensee and his or her patients a*
8 *privileged communication, those provisions shall not apply to*
9 *investigations or proceedings conducted by the board. Members*
10 *of the board, deputies, employees, agents, the office of the Attorney*
11 *General, and representatives of the board shall keep in confidence*
12 *during the course of investigations the names of any patients whose*
13 *records are reviewed and may not disclose or reveal those names,*
14 *except as is necessary during the course of an investigation, unless*
15 *and until proceedings are instituted. The authority under this*
16 *subdivision to examine records of patients in the office of a licensee*
17 *is limited to records of patients who have complained to the board*
18 *about that licensee.*

19 *(b) Notwithstanding any other provision of law, the Attorney*
20 *General and his or her investigative agents, and the committee*
21 *and its investigators and representatives may inquire into any*
22 *alleged violation of the laws under the jurisdiction of the committee*
23 *or any other federal or state law, regulation, or rule relevant to*
24 *the practice regulated by the committee, whichever is applicable,*
25 *and may inspect documents relevant to those investigations in*
26 *accordance with the following procedures:*

27 *(1) Any document relevant to an investigation may be inspected,*
28 *and copies may be obtained, where a patient provides written*
29 *authorization.*

30 *(2) Any document relevant to the business operations of a*
31 *licensee, and not involving medical records attributable to*
32 *identifiable patients, may be inspected and copied where relevant*
33 *to an investigation of a licensee.*

34 *(c) In all cases where documents are inspected or copies of*
35 *those documents are received, their acquisition or review shall be*
36 *arranged so as not to unnecessarily disrupt the medical and*
37 *business operations of the licensee or of the facility where the*
38 *records are kept or used.*

39 *(d) Where certified documents are lawfully requested from*
40 *licensees in accordance with this section by the Attorney General*

1 or his or her agents or deputies, or investigators of any board, the
2 documents shall be provided within 10 business days of receipt of
3 the request, unless the licensee is unable to provide the certified
4 documents within this time period for good cause, including, but
5 not limited to, physical inability to access the records in the time
6 allowed due to illness or travel. Failure to produce requested
7 certified documents or copies thereof, after being informed of the
8 required deadline, shall constitute unprofessional conduct. The
9 committee may use its authority to cite and fine a licensee for any
10 violation of this section. This remedy is in addition to any other
11 authority of the committee to sanction a licensee for a delay in
12 producing requested records.

13 (e) Searches conducted of the office or medical facility of any
14 licensee shall not interfere with the recordkeeping format or
15 preservation needs of any licensee necessary for the lawful care
16 of patients.

17 (f) The licensee shall cooperate with the board in furnishing
18 information or assistance as may be required, including, but not
19 limited to, participation in an interview with investigators or
20 representatives of the committee.

21 (g) This section shall not apply to a licensee who does not have
22 access to, and control over, certified medical records or other
23 types of documents that belong to or are controlled by a health
24 facility or clinic.

25 SEC. 131. Section 3665.6 is added to the Business and
26 Professions Code, to read:

27 3665.6. (a) (1) Notwithstanding any other provision of law,
28 a licensee who fails or refuses to comply with a request for the
29 certified medical records of a patient that is accompanied by that
30 patient's written authorization for release of records to the
31 committee together with a notice citing this section and describing
32 the penalties for failure to comply with this section shall be
33 required to pay to the board a civil penalty of up to one thousand
34 dollars (\$1,000) per day for each day that the documents have not
35 been produced after the 15th day, up to ten thousand dollars
36 (\$10,000), unless the licensee is unable to provide the documents
37 within this time period for good cause.

38 (2) A health care facility shall comply with a request for the
39 certified medical records of a patient that is accompanied by that
40 patient's written authorization for release of records to the

1 committee together with a notice citing this section and describing
2 the penalties for failure to comply with this section. Failure to
3 provide the authorizing patient's certified medical records to the
4 board within 15 days of receiving the request, authorization, and
5 notice shall subject the health care facility to a civil penalty,
6 payable to the committee, of up to one thousand dollars (\$1,000)
7 per day for each day that the documents have not been produced
8 after the 15th day, up to ten thousand dollars (\$10,000), unless
9 the health care facility is unable to provide the documents within
10 this time period for good cause. This paragraph shall not require
11 health care facilities to assist the committee in obtaining the
12 patient's authorization. The committee shall pay the reasonable
13 costs of copying the certified medical records, but shall not be
14 required to make that payment prior to the production of the
15 medical records.

16 (b) (1) A licensee who fails or refuses to comply with a court
17 order, issued in the enforcement of a subpoena, mandating the
18 release of records to the committee, shall pay to the committee a
19 civil penalty of up to one thousand dollars (\$1,000) per day for
20 each day that the documents have not been produced after the date
21 by which the court order requires the documents to be produced,
22 up to ten thousand dollars (\$10,000), unless it is determined that
23 the order is unlawful or invalid. Any statute of limitations
24 applicable to the filing of an accusation by the committee shall be
25 tolled during the period the licensee is out of compliance with the
26 court order and during any related appeals.

27 (2) Any licensee who fails or refuses to comply with a court
28 order, issued in the enforcement of a subpoena, mandating the
29 release of records to a board is guilty of a misdemeanor punishable
30 by a fine payable to the committee not to exceed five thousand
31 dollars (\$5,000). The fine shall be added to the licensee's renewal
32 fee if it is not paid by the next succeeding renewal date. Any statute
33 of limitations applicable to the filing of an accusation by the
34 committee shall be tolled during the period the licensee is out of
35 compliance with the court order and during any related appeals.

36 (3) A health care facility that fails or refuses to comply with a
37 court order, issued in the enforcement of a subpoena, mandating
38 the release of patient records to the committee, that is accompanied
39 by a notice citing this section and describing the penalties for
40 failure to comply with this section, shall pay to the committee a

1 civil penalty of up to one thousand dollars (\$1,000) per day for
2 each day that the documents have not been produced, up to ten
3 thousand dollars (\$10,000), after the date by which the court order
4 requires the documents to be produced, unless it is determined
5 that the order is unlawful or invalid. Any statute of limitations
6 applicable to the filing of an accusation by the committee against
7 a licensee shall be tolled during the period the health care facility
8 is out of compliance with the court order and during any related
9 appeals.

10 (4) Any health care facility that fails or refuses to comply with
11 a court order, issued in the enforcement of a subpoena, mandating
12 the release of records to a healing arts board is guilty of a
13 misdemeanor punishable by a fine payable to the committee not
14 to exceed five thousand dollars (\$5,000). Any statute of limitations
15 applicable to the filing of an accusation by the committee against
16 a licensee shall be tolled during the period the health care facility
17 is out of compliance with the court order and during any related
18 appeals.

19 (c) Multiple acts by a licensee in violation of subdivision (b)
20 shall be punishable by a fine not to exceed five thousand dollars
21 (\$5,000) or by imprisonment in a county jail not exceeding six
22 months, or by both that fine and imprisonment. Multiple acts by
23 a health care facility in violation of subdivision (b) shall be
24 punishable by a fine not to exceed five thousand dollars (\$5,000),
25 shall be reported to the State Department of Public Health, and
26 shall be considered as grounds for disciplinary action with respect
27 to licensure, including suspension or revocation of the license or
28 certificate.

29 (d) A failure or refusal of a licensee to comply with a court
30 order, issued in the enforcement of a subpoena, mandating the
31 release of records to the committee constitutes unprofessional
32 conduct and is grounds for suspension or revocation of his or her
33 license.

34 (e) Imposition of the civil penalties authorized by this section
35 shall be in accordance with the Administrative Procedure Act
36 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
37 2 of the Government Code). Any civil penalties paid to, or received
38 by, the committee pursuant to this section shall be deposited into
39 the fund administered by the committee.

1 (f) For purposes of this section, “certified medical records”
2 means a copy of the patient’s medical records authenticated by
3 the licensee or health care facility, as appropriate, on a form
4 prescribed by the licensee’s board.

5 (g) For purposes of this section, a “health care facility” means
6 a clinic or health facility licensed or exempt from licensure
7 pursuant to Division 2 (commencing with Section 1200) of the
8 Health and Safety Code.

9 (h) If the committee complies with Section 1684.1, 2225.5, or
10 2969, the committee shall not be subject to the requirements of
11 this section.

12 (i) This section shall not apply to a licensee who does not have
13 access to, or control over, certified medical records or other types
14 of documents that belong to or are controlled by a health facility
15 or clinic.

16 SEC. 132. Section 3665.7 is added to the Business and
17 Professions Code, to read:

18 3665.7. (a) Notwithstanding any other provision of law, any
19 employer of a licensee shall report to the committee the suspension
20 or termination for cause, or any resignation in lieu of suspension
21 or termination for cause, of any licensee in its employ within 15
22 business days. The report shall not be made until after the
23 conclusion of the review process specified in Section 52.3 of Title
24 2 of the California Code of Regulations and *Skelly v. State*
25 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
26 required reporting shall not constitute a waiver of confidentiality
27 of medical records. The information reported or disclosed shall
28 be kept confidential except as provided in subdivision (c) of Section
29 800 and shall not be subject to discovery in civil cases.

30 (b) The information to be reported by the employer shall include
31 the name and license number of the licensee involved, a
32 description of the facts and circumstances of the suspension or
33 termination for cause, any resignation in lieu of suspension or
34 termination for cause, and any other relevant information deemed
35 appropriate by the employer.

36 (c) The committee shall be entitled to inspect and copy the
37 following documents in the record for any suspension or
38 termination for cause, or any resignation in lieu of suspension or
39 termination for cause, resulting in action that is required to be
40 reported pursuant to this section:

1 (1) Any statement for suspension or termination of the licensee.

2 (2) Any document or exhibits relevant to the suspension or
3 termination.

4 (d) If, during the investigation by the committee of the cause
5 for the termination or suspension or resignation of the licensee,
6 it is found that there has been a violation of existing state or federal
7 law, the committee shall report the violation to the appropriate
8 agency.

9 (e) For purposes of this section, “suspension or termination for
10 cause” or “resignation in lieu of suspension or termination for
11 cause” is defined as resignation, suspension, or termination from
12 employment for any of the following reasons:

13 (1) Use of controlled substances or alcohol to the extent that it
14 impairs the licensee’s ability to safely practice.

15 (2) Unlawful sale of a controlled substance or other prescription
16 items.

17 (3) Patient or client abuse, neglect, physical harm, or sexual
18 contact with a patient or client.

19 (4) Gross negligence or incompetence.

20 (5) Theft from a patient or client, any other employee, or the
21 employer.

22 (f) As used in this section, the following definitions apply:

23 (1) “Gross negligence” means a substantial departure from the
24 standard of care, which, under similar circumstances, would have
25 ordinarily been exercised by a competent licensee, and which has
26 or could have resulted in harm to the consumer. An exercise of so
27 slight a degree of care as to justify the belief that there was a
28 conscious disregard or indifference for the health, safety, or
29 welfare of the consumer shall be considered a substantial departure
30 from the standard of care.

31 (2) “Incompetence” means the lack of possession of, and the
32 failure to exercise that degree of learning, skill, care, and
33 experience ordinarily possessed by, a responsible licensee.

34 (3) “Willful” means a knowing and intentional violation of a
35 known legal duty.

36 (g) (1) Willful failure of an employer to make a report required
37 by this section is punishable by an administrative fine not to exceed
38 one hundred thousand dollars (\$100,000) per violation.

1 (2) Any failure of an employer, other than willful failure, to
2 make a report required by this section is punishable by an
3 administrative fine not to exceed fifty thousand dollars (\$50,000).

4 (h) The committee shall investigate the circumstances underlying
5 any report received pursuant to this section within 30 days to
6 determine if an interim suspension order or temporary restraining
7 order should be issued. The board shall otherwise provide timely
8 disposition of the reports received pursuant to this section.

9 (i) The committee shall send to the licentiate a copy of the report
10 along with the reasons for the filing of the report and notice
11 advising the licentiate of his or her right to submit additional
12 statements or other information to the board.

13 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
14 incur any civil penalty as a result of making any report required
15 by this article.

16 (k) No report is required under this section where a report of
17 the action taken is already required under Section 805.

18 SEC. 133. Section 3665.8 is added to the Business and
19 Professions Code, to read:

20 3665.8. Unless otherwise provided, on or after July 1, 2013,
21 the committee shall post on its Internet Web site the following
22 information, including the name and license number, in its
23 possession, custody, or control regarding every licensee for which
24 the committee licenses:

25 (a) With regard to the status of every license, whether or not
26 the licensee or former licensee is in good standing, subject to a
27 temporary restraining order, subject to an interim suspension
28 order, subject to a restriction or cease practice ordered pursuant
29 to Section 23 of the Penal Code, or subject to any of the
30 enforcement actions described in Section 803.1.

31 (b) With regard to prior discipline of a licensee, whether or not
32 the licensee or former licensee has been subject to discipline by
33 the board or by the board of another state or jurisdiction, as
34 described in Section 803.1.

35 (c) Any felony conviction of a licensee reported to the board.

36 (d) All current accusations filed by the Attorney General,
37 including those accusations that are on appeal. For purposes of
38 this paragraph, "current accusation" means an accusation that
39 has not been dismissed, withdrawn, or settled, and has not been

1 *finally decided upon by an administrative law judge and the board*
2 *unless an appeal of that decision is pending.*

3 *(e) Any malpractice judgment or arbitration award imposed*
4 *against a licensee and reported to the committee.*

5 *(f) Any hospital disciplinary action imposed against a licensee*
6 *that resulted in the termination or revocation of a licensee's*
7 *hospital staff privileges for a medical disciplinary cause or reason*
8 *pursuant to Section 3665.8 or 805.*

9 *(g) Any misdemeanor conviction of a licensee that results in a*
10 *disciplinary action or an accusation that is not subsequently*
11 *withdrawn or dismissed.*

12 *(h) Appropriate disclaimers and explanatory statements to*
13 *accompany the above information, including an explanation of*
14 *what types of information are not disclosed. These disclaimers*
15 *and statements shall be developed by the board and shall be*
16 *adopted by regulation.*

17 *(i) The information provided on the Internet shall be in*
18 *accordance with the California Public Records Act (Chapter 3.5*
19 *(commencing with Section 6250) of Division 7 of Title 1 of the*
20 *Government Code) and the Information Practices Act of 1977*
21 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
22 *of Division 3 of the Civil Code) and shall comply with the*
23 *Department of Consumer Affairs Guidelines for Access to Public*
24 *Records.*

25 *(j) Information provided on the Internet may not include*
26 *personal information, unless otherwise provided pursuant to this*
27 *chapter, including the home telephone number, date of birth, or*
28 *social security number. The information may not include the*
29 *licensee's address, but may include the city and county of the*
30 *licensee's address of record.*

31 *SEC. 134. Section 3665.9 is added to the Business and*
32 *Professions Code, to read:*

33 *3665.9. (a) Unless otherwise provided, if a licensee possesses*
34 *a license or is otherwise authorized to practice in any state other*
35 *than California or by any agency of the federal government and*
36 *that license or authority is suspended or revoked outright, the*
37 *California license of the licensee shall be suspended automatically*
38 *for the duration of the suspension or revocation, unless terminated*
39 *or rescinded as provided in subdivision (c). The committee shall*

1 *notify the licensee of the license suspension and of his or her right*
2 *to have the issue of penalty heard as provided in this section.*

3 *(b) Upon its own motion or for good cause shown, a committee*
4 *may decline to impose or may set aside the suspension when it*
5 *appears to be in the interest of justice to do so, with due regard*
6 *to maintaining the integrity of, and confidence in, the specific*
7 *healing art.*

8 *(c) The issue of penalty shall be heard by an administrative law*
9 *judge sitting alone or with a panel of the committee, in the*
10 *discretion of the board. A licensee may request a hearing on the*
11 *penalty and that hearing shall be held within 90 days from the*
12 *date of the request. If the order suspending or revoking the license*
13 *or authority to practice is overturned on appeal, any discipline*
14 *ordered pursuant to this section shall automatically cease. Upon*
15 *a showing to the administrative law judge or panel by the licensee*
16 *that the out-of-state action is not a basis for discipline in*
17 *California, the suspension shall be rescinded. If an accusation for*
18 *permanent discipline is not filed within 90 days of the suspension*
19 *imposed pursuant to this section, the suspension shall automatically*
20 *terminate.*

21 *(d) The record of the proceedings that resulted in the suspension*
22 *or revocation of the licensee's out-of-state license or authority to*
23 *practice, including a transcript of the testimony therein, may be*
24 *received in evidence.*

25 *(e) This section shall not apply to a licensee who maintains his*
26 *or her primary practice in California, as evidenced by having*
27 *maintained a practice in this state for not less than one year*
28 *immediately preceding the date of suspension or revocation.*
29 *Nothing in this section shall preclude a licensee's license from*
30 *being suspended pursuant to any other provision of law.*

31 *(f) This section shall not apply to a licensee whose license has*
32 *been surrendered, whose only discipline is a medical staff*
33 *disciplinary action at a federal hospital and not for medical*
34 *disciplinary cause or reason as that term is defined in Section 805,*
35 *or whose revocation or suspension has been stayed, even if the*
36 *licensee remains subject to terms of probation or other discipline.*

37 *(g) This section shall not apply to a suspension or revocation*
38 *imposed by a state that is based solely on the prior discipline of*
39 *the licensee by another state.*

1 (h) *The other provisions of this article setting forth a procedure*
2 *for the suspension or revocation of a licensee's license or*
3 *certificate shall not apply to summary suspensions issued pursuant*
4 *to this section. If a summary suspension has been issued pursuant*
5 *to this section, the licensee may request that the hearing on the*
6 *penalty conducted pursuant to subdivision (c) be held at the same*
7 *time as a hearing on the accusation.*

8 (i) *A board that complies with Section 2310 shall not be subject*
9 *to the requirements of this section.*

10 SEC. 135. *Section 3769.4 is added to the Business and*
11 *Professions Code, to read:*

12 3769.4. (a) *The board may delegate to its executive officer the*
13 *authority to adopt a proposed default decision where an*
14 *administrative action to revoke a license has been filed and the*
15 *licensee has failed to file a notice of defense or to appear at the*
16 *hearing and a proposed default decision revoking the license has*
17 *been issued.*

18 (b) *The board may delegate to its executive officer the authority*
19 *to adopt a proposed settlement agreement where an administrative*
20 *action to revoke a license has been filed by the board and the*
21 *licensee has agreed to the revocation or surrender of his or her*
22 *license.*

23 (c) *The executive officer shall, at scheduled board meetings,*
24 *report to the board the number of proposed default decisions or*
25 *proposed settlement agreements adopted pursuant to this section.*

26 SEC. 136. *Section 3769.5 is added to the Business and*
27 *Professions Code, to read:*

28 3769.5. (a) *Notwithstanding Section 11415.60 of the*
29 *Government Code, the board may enter into a settlement with a*
30 *licensee or applicant in lieu of the issuance of an accusation or*
31 *statement of issues against that licensee or applicant, as applicable.*

32 (b) *The settlement shall include language identifying the factual*
33 *basis for the action being taken and a list of the statutes or*
34 *regulations violated.*

35 (c) *A person who enters a settlement pursuant to this section is*
36 *not precluded from filing a petition, in the timeframe permitted by*
37 *law, to modify the terms of the settlement or petition for early*
38 *termination of probation, if probation is part of the settlement.*

39 (d) *Any settlement against a licensee executed pursuant to this*
40 *section shall be considered discipline and a public record and*

1 shall be posted on the applicable board's Internet Web site. Any
2 settlement against an applicant executed pursuant to this section
3 shall be considered a public record and shall be posted on the
4 applicable board's Internet Web site.

5 (e) The executive officer shall, at scheduled board meetings,
6 report to the board the number of proposed settlement agreements
7 adopted pursuant to this section.

8 SEC. 137. Section 3769.6 is added to the Business and
9 Professions Code, to read:

10 3769.6. (a) The license of a licensee shall be suspended
11 automatically during any time that the licensee is incarcerated
12 after conviction of a felony, regardless of whether the conviction
13 has been appealed. The board shall, immediately upon receipt of
14 the certified copy of the record of conviction, determine whether
15 the license of the licensee has been automatically suspended by
16 virtue of his or her incarceration, and if so, the duration of that
17 suspension. The board shall notify the licensee in writing of the
18 license suspension and of his or her right to elect to have the issue
19 of penalty heard as provided in subdivision (d).

20 (b) Upon receipt of the certified copy of the record of conviction,
21 if after a hearing before an administrative law judge from the
22 Office of Administrative Hearings it is determined that the felony
23 for which the licensee was convicted was substantially related to
24 the qualifications, functions, or duties of a licensee, the board
25 shall suspend the license until the time for appeal has elapsed, if
26 no appeal has been taken, or until the judgment of conviction has
27 been affirmed on appeal or has otherwise become final, and until
28 further order of the board.

29 (c) Notwithstanding subdivision (b), a conviction of a charge
30 of violating any federal statute or regulation or any statute or
31 regulation of this state, regulating dangerous drugs or controlled
32 substances, or a conviction of Section 187, 261, 262, or 288 of the
33 Penal Code, shall be conclusively presumed to be substantially
34 related to the qualifications, functions, or duties of a licensee and
35 no hearing shall be held on this issue. However, upon its own
36 motion or for good cause shown, the board may decline to impose
37 or may set aside the suspension when it appears to be in the interest
38 of justice to do so, with due regard to maintaining the integrity of,
39 and confidence in, the practice regulated by the board.

1 (d) (1) Discipline may be ordered against a licensee in
2 accordance with the statutes and regulations of the board when
3 the time for appeal has elapsed, the judgment of conviction has
4 been affirmed on appeal, or an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent
6 order under Section 1203.4 of the Penal Code allowing the person
7 to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, setting aside the verdict of guilty, or dismissing the
9 accusation, complaint, information, or indictment.

10 (2) The issue of penalty shall be heard by an administrative law
11 judge from the Office of Administrative Hearings. The hearing
12 shall not be had until the judgment of conviction has become final
13 or, irrespective of a subsequent order under Section 1203.4 of the
14 Penal Code, an order granting probation has been made
15 suspending the imposition of sentence; except that a licensee may,
16 at his or her option, elect to have the issue of penalty decided
17 before those time periods have elapsed. Where the licensee so
18 elects, the issue of penalty shall be heard in the manner described
19 in subdivision (b) at the hearing to determine whether the
20 conviction was substantially related to the qualifications, functions,
21 or duties of a licensee. If the conviction of a licensee who has made
22 this election is overturned on appeal, any discipline ordered
23 pursuant to this section shall automatically cease. Nothing in this
24 subdivision shall prohibit the board from pursuing disciplinary
25 action based on any cause other than the overturned conviction.

26 (e) The record of the proceedings resulting in a conviction,
27 including a transcript of the testimony in those proceedings, may
28 be received in evidence.

29 (f) Any other provision of law setting forth a procedure for the
30 suspension or revocation of a license issued by the board shall not
31 apply to proceedings conducted pursuant to this section.

32 SEC. 138. Section 3769.7 is added to the Business and
33 Professions Code, to read:

34 3769.7. (a) Except as otherwise provided, any proposed
35 decision or decision issued in accordance with the procedures set
36 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
37 Division 3 of Title 2 of the Government Code, that contains any
38 finding of fact that the licensee engaged in any act of sexual contact
39 with a patient, as defined in subdivision (c) of Section 729, or any
40 finding that the licensee has committed a sex offense, shall contain

1 *an order revoking the license. The proposed decision shall not*
2 *contain any order staying the revocation of the licensee.*

3 *(b) As used in this section, the term sex offense shall mean any*
4 *of the following:*

5 *(1) Any offense for which registration is required by Section*
6 *290 of the Penal Code or a finding that a person committed such*
7 *an act.*

8 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
9 *or 647(a) or (d) of the Penal Code or a finding that a person*
10 *committed such an act.*

11 *(3) Any attempt to commit any of the offenses specified in this*
12 *section.*

13 *(4) Any offense committed or attempted in any other state or*
14 *against the laws of the United States which, if committed or*
15 *attempted in this state, would have been punishable as one or more*
16 *of the offenses specified in this section.*

17 *SEC. 139. Section 3769.8 is added to the Business and*
18 *Professions Code, to read:*

19 *3769.8. (a) Except as otherwise provided, with regard to an*
20 *individual who is required to register as a sex offender pursuant*
21 *to Section 290 of the Penal Code, or the equivalent in another*
22 *state or territory, under military law, or under federal law, the*
23 *board shall be subject to the following requirements:*

24 *(1) The board shall deny an application by the individual for*
25 *licensure in accordance with the procedures set forth in Chapter*
26 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
27 *2 of the Government Code.*

28 *(2) If the individual is licensed under this chapter, the board*
29 *shall promptly revoke the license of the individual in accordance*
30 *with the procedures set forth in Chapter 5 (commencing with*
31 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
32 *Code. The board shall not stay the revocation and place the license*
33 *on probation.*

34 *(3) The board shall not reinstate or reissue the individual's*
35 *license. The board shall not issue a stay of license denial nor place*
36 *the license on probation.*

37 *(b) This section shall not apply to any of the following:*

38 *(1) An individual who has been relieved under Section 290.5 of*
39 *the Penal Code of his or her duty to register as a sex offender, or*
40 *whose duty to register has otherwise been formally terminated*

1 under California law or the law of the jurisdiction that requires
2 his or her registration as a sex offender.

3 (2) An individual who is required to register as a sex offender
4 pursuant to Section 290 of the Penal Code solely because of a
5 misdemeanor conviction under Section 314 of the Penal Code.
6 However, nothing in this paragraph shall prohibit the board from
7 exercising its discretion to discipline a licensee under any other
8 provision of state law based upon the licensee's conviction under
9 Section 314 of the Penal Code.

10 (3) Any administrative adjudication proceeding under Chapter
11 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
12 2 of the Government Code that is fully adjudicated prior to January
13 1, 2008. A petition for reinstatement of a revoked or surrendered
14 license shall be considered a new proceeding for purposes of this
15 paragraph, and the prohibition against reinstating a license to an
16 individual who is required to register as a sex offender shall be
17 applicable.

18 SEC. 140. Section 3769.9 is added to the Business and
19 Professions Code, to read:

20 3769.9. Unless otherwise provided, on or after July 1, 2013,
21 the board shall post on its Internet Web site the following
22 information in its possession, custody, or control regarding every
23 licensee for which the board licenses:

24 (a) With regard to the status of every license, whether or not
25 the licensee or former licensee is in good standing, subject to a
26 temporary restraining order, subject to an interim suspension
27 order, subject to a restriction or cease practice ordered pursuant
28 to Section 23 of the Penal Code, or subject to any of the
29 enforcement actions described in Section 803.1.

30 (b) With regard to prior discipline of a licensee, whether or not
31 the licensee or former licensee has been subject to discipline by
32 the board or by the board of another state or jurisdiction, as
33 described in Section 803.1.

34 (c) Any felony conviction of a licensee reported to the board.

35 (d) All current accusations filed by the Attorney General,
36 including those accusations that are on appeal. For purposes of
37 this paragraph, "current accusation" means an accusation that
38 has not been dismissed, withdrawn, or settled, and has not been
39 finally decided upon by an administrative law judge and the board
40 unless an appeal of that decision is pending.

1 (e) Any malpractice judgment or arbitration award imposed
2 against a licensee and reported to the healing arts board.

3 (f) Any hospital disciplinary action imposed against a licensee
4 that resulted in the termination or revocation of a licensee's
5 hospital staff privileges for a medical disciplinary cause or reason
6 pursuant to Section 805.

7 (g) Any misdemeanor conviction of a licensee that results in a
8 disciplinary action or an accusation that is not subsequently
9 withdrawn or dismissed.

10 (h) Appropriate disclaimers and explanatory statements to
11 accompany the above information, including an explanation of
12 what types of information are not disclosed. These disclaimers
13 and statements shall be developed by the board and shall be
14 adopted by regulation.

15 (i) The information provided on the Internet shall be in
16 accordance with the California Public Records Act (Chapter 3.5
17 (commencing with Section 6250) of Division 7 of Title 1 of the
18 Government Code) and the Information Practices Act of 1977
19 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
20 of Division 3 of the Civil Code) and shall comply with the
21 Department of Consumer Affairs Guidelines for Access to Public
22 Records.

23 (j) Information provided on the Internet may not include
24 personal information, unless otherwise provided pursuant to this
25 chapter, including the home telephone number, date of birth, or
26 social security number. The information may not include the
27 licensee's address, but may include the city and county of the
28 licensee's address of record.

29 SEC. 141. Section 3796.10 is added to the Business and
30 Professions Code, to read:

31 3796.10. (a) Unless otherwise provided, if a licensee possesses
32 a license or is otherwise authorized to practice in any state other
33 than California or by any agency of the federal government and
34 that license or authority is suspended or revoked outright, the
35 California license of the licensee shall be suspended automatically
36 for the duration of the suspension or revocation, unless terminated
37 or rescinded as provided in subdivision (c). The healing arts board
38 shall notify the licensee of the license suspension and of his or her
39 right to have the issue of penalty heard as provided in this section.

1 (b) Upon its own motion or for good cause shown, a healing
2 arts board may decline to impose or may set aside the suspension
3 when it appears to be in the interest of justice to do so, with due
4 regard to maintaining the integrity of, and confidence in, the
5 specific healing art.

6 (c) The issue of penalty shall be heard by an administrative law
7 judge sitting alone or with a panel of the board, in the discretion
8 of the board. A licensee may request a hearing on the penalty and
9 that hearing shall be held within 90 days from the date of the
10 request. If the order suspending or revoking the license or authority
11 to practice is overturned on appeal, any discipline ordered
12 pursuant to this section shall automatically cease. Upon a showing
13 to the administrative law judge or panel by the licensee that the
14 out-of-state action is not a basis for discipline in California, the
15 suspension shall be rescinded. If an accusation for permanent
16 discipline is not filed within 90 days of the suspension imposed
17 pursuant to this section, the suspension shall automatically
18 terminate.

19 (d) The record of the proceedings that resulted in the suspension
20 or revocation of the licensee's out-of-state license or authority to
21 practice, including a transcript of the testimony therein, may be
22 received in evidence.

23 (e) This section shall not apply to a licensee who maintains his
24 or her primary practice in California, as evidenced by having
25 maintained a practice in this state for not less than one year
26 immediately preceding the date of suspension or revocation.
27 Nothing in this section shall preclude a licensee's license from
28 being suspended pursuant to any other provision of law.

29 (f) This section shall not apply to a licensee whose license has
30 been surrendered, whose only discipline is a medical staff
31 disciplinary action at a federal hospital and not for medical
32 disciplinary cause or reason as that term is defined in Section 805,
33 or whose revocation or suspension has been stayed, even if the
34 licensee remains subject to terms of probation or other discipline.

35 (g) This section shall not apply to a suspension or revocation
36 imposed by a state that is based solely on the prior discipline of
37 the licensee by another state.

38 (h) The other provisions of this article setting forth a procedure
39 for the suspension or revocation of a licensee's license or
40 certificate shall not apply to summary suspensions issued pursuant

1 to this section. If a summary suspension has been issued pursuant
2 to this section, the licensee may request that the hearing on the
3 penalty conducted pursuant to subdivision (c) be held at the same
4 time as a hearing on the accusation.

5 (i) A board that complies with Section 2310 shall not be subject
6 to the requirements of this section.

7 SEC. 142. Section 4316 is added to the Business and
8 Professions Code, to read:

9 4316. (a) The board may delegate to its executive officer the
10 authority to adopt a proposed default decision where an
11 administrative action to revoke a license has been filed and the
12 licensee has failed to file a notice of defense or to appear at the
13 hearing and a proposed default decision revoking the license has
14 been issued.

15 (b) The board may delegate to its executive officer the authority
16 to adopt a proposed settlement agreement where an administrative
17 action to revoke a license has been filed by the board and the
18 licensee has agreed to the revocation or surrender of his or her
19 license.

20 (c) The executive officer shall, at scheduled board meetings,
21 report to the board the number of proposed default decisions or
22 proposed settlement agreements adopted pursuant to this section.

23 SEC. 143. Section 4316.1 is added to the Business and
24 Professions Code, to read:

25 4316.1. (a) Notwithstanding Section 11415.60 of the
26 Government Code, the board may enter into a settlement with a
27 licensee or applicant in lieu of the issuance of an accusation or
28 statement of issues against that licensee or applicant, as applicable.

29 (b) The settlement shall include language identifying the factual
30 basis for the action being taken and a list of the statutes or
31 regulations violated.

32 (c) A person who enters a settlement pursuant to this section is
33 not precluded from filing a petition, in the timeframe permitted by
34 law, to modify the terms of the settlement or petition for early
35 termination of probation, if probation is part of the settlement.

36 (d) Any settlement against a licensee executed pursuant to this
37 section shall be considered discipline and a public record and
38 shall be posted on the applicable board's Internet Web site. Any
39 settlement against an applicant executed pursuant to this section

1 *shall be considered a public record and shall be posted on the*
2 *applicable board's Internet Web site.*

3 *(e) The executive officer shall, at scheduled board meetings,*
4 *report to the board the number of proposed settlement agreements*
5 *adopted pursuant to this section.*

6 *SEC. 144. Section 4316.2 is added to the Business and*
7 *Professions Code, to read:*

8 *4316.2. (a) The license of a licensee shall be suspended*
9 *automatically during any time that the licensee is incarcerated*
10 *after conviction of a felony, regardless of whether the conviction*
11 *has been appealed. The board shall, immediately upon receipt of*
12 *the certified copy of the record of conviction, determine whether*
13 *the license of the licensee has been automatically suspended by*
14 *virtue of his or her incarceration, and if so, the duration of that*
15 *suspension. The board shall notify the licensee in writing of the*
16 *license suspension and of his or her right to elect to have the issue*
17 *of penalty heard as provided in subdivision (d).*

18 *(b) Upon receipt of the certified copy of the record of conviction,*
19 *if after a hearing before an administrative law judge from the*
20 *Office of Administrative Hearings it is determined that the felony*
21 *for which the licensee was convicted was substantially related to*
22 *the qualifications, functions, or duties of a licensee, the board*
23 *shall suspend the license until the time for appeal has elapsed, if*
24 *no appeal has been taken, or until the judgment of conviction has*
25 *been affirmed on appeal or has otherwise become final, and until*
26 *further order of the board.*

27 *(c) Notwithstanding subdivision (b), a conviction of a charge*
28 *of violating any federal statute or regulation or any statute or*
29 *regulation of this state, regulating dangerous drugs or controlled*
30 *substances, or a conviction of Section 187, 261, 262, or 288 of the*
31 *Penal Code, shall be conclusively presumed to be substantially*
32 *related to the qualifications, functions, or duties of a licensee and*
33 *no hearing shall be held on this issue. However, upon its own*
34 *motion or for good cause shown, the board may decline to impose*
35 *or may set aside the suspension when it appears to be in the interest*
36 *of justice to do so, with due regard to maintaining the integrity of,*
37 *and confidence in, the practice regulated by the board.*

38 *(d) (1) Discipline may be ordered against a licensee in*
39 *accordance with the statutes and regulations of the board when*
40 *the time for appeal has elapsed, the judgment of conviction has*

1 *been affirmed on appeal, or an order granting probation is made*
2 *suspending the imposition of sentence, irrespective of a subsequent*
3 *order under Section 1203.4 of the Penal Code allowing the person*
4 *to withdraw his or her plea of guilty and to enter a plea of not*
5 *guilty, setting aside the verdict of guilty, or dismissing the*
6 *accusation, complaint, information, or indictment.*

7 *(2) The issue of penalty shall be heard by an administrative law*
8 *judge from the Office of Administrative Hearings. The hearing*
9 *shall not be had until the judgment of conviction has become final*
10 *or, irrespective of a subsequent order under Section 1203.4 of the*
11 *Penal Code, an order granting probation has been made*
12 *suspending the imposition of sentence; except that a licensee may,*
13 *at his or her option, elect to have the issue of penalty decided*
14 *before those time periods have elapsed. Where the licensee so*
15 *elects, the issue of penalty shall be heard in the manner described*
16 *in subdivision (b) at the hearing to determine whether the*
17 *conviction was substantially related to the qualifications, functions,*
18 *or duties of a licensee. If the conviction of a licensee who has made*
19 *this election is overturned on appeal, any discipline ordered*
20 *pursuant to this section shall automatically cease. Nothing in this*
21 *subdivision shall prohibit the board from pursuing disciplinary*
22 *action based on any cause other than the overturned conviction.*

23 *(e) The record of the proceedings resulting in a conviction,*
24 *including a transcript of the testimony in those proceedings, may*
25 *be received in evidence.*

26 *(f) Any other provision of law setting forth a procedure for the*
27 *suspension or revocation of a license issued by the board shall not*
28 *apply to proceedings conducted pursuant to this section.*

29 *SEC. 145. Section 4316.3 is added to the Business and*
30 *Professions Code, to read:*

31 *4316.3. (a) Except as otherwise provided, any proposed*
32 *decision or decision issued in accordance with the procedures set*
33 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
34 *Division 3 of Title 2 of the Government Code, that contains any*
35 *finding of fact that the licensee engaged in any act of sexual contact*
36 *with a patient, as defined in subdivision (c) of Section 729, or any*
37 *finding that the licensee has committed a sex offense, shall contain*
38 *an order revoking the license. The proposed decision shall not*
39 *contain any order staying the revocation of the licensee.*

1 ***(b) As used in this section, the term sex offense shall mean any***
2 ***of the following:***

3 ***(1) Any offense for which registration is required by Section***
4 ***290 of the Penal Code or a finding that a person committed such***
5 ***an act.***

6 ***(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,***
7 ***or 647(a) or (d) of the Penal Code or a finding that a person***
8 ***committed such an act.***

9 ***(3) Any attempt to commit any of the offenses specified in this***
10 ***section.***

11 ***(4) Any offense committed or attempted in any other state or***
12 ***against the laws of the United States which, if committed or***
13 ***attempted in this state, would have been punishable as one or more***
14 ***of the offenses specified in this section.***

15 ***SEC. 146. Section 4316.4 is added to the Business and***
16 ***Professions Code, to read:***

17 ***4316.4. (a) Except as otherwise provided, with regard to an***
18 ***individual who is required to register as a sex offender pursuant***
19 ***to Section 290 of the Penal Code, or the equivalent in another***
20 ***state or territory, under military law, or under federal law, the***
21 ***board shall be subject to the following requirements:***

22 ***(1) The board shall deny an application by the individual for***
23 ***licensure in accordance with the procedures set forth in Chapter***
24 ***5 (commencing with Section 11500) of Part 1 of Division 3 of Title***
25 ***2 of the Government Code.***

26 ***(2) If the individual is licensed under this chapter, the board***
27 ***shall promptly revoke the license of the individual in accordance***
28 ***with the procedures set forth in Chapter 5 (commencing with***
29 ***Section 11500) of Part 1 of Division 3 of Title 2 of the Government***
30 ***Code. The board shall not stay the revocation and place the license***
31 ***on probation.***

32 ***(3) The board shall not reinstate or reissue the individual's***
33 ***license. The board shall not issue a stay of license denial nor place***
34 ***the license on probation.***

35 ***(b) This section shall not apply to any of the following:***

36 ***(1) An individual who has been relieved under Section 290.5 of***
37 ***the Penal Code of his or her duty to register as a sex offender, or***
38 ***whose duty to register has otherwise been formally terminated***
39 ***under California law or the law of the jurisdiction that requires***
40 ***his or her registration as a sex offender.***

1 (2) *An individual who is required to register as a sex offender*
2 *pursuant to Section 290 of the Penal Code solely because of a*
3 *misdemeanor conviction under Section 314 of the Penal Code.*
4 *However, nothing in this paragraph shall prohibit the board from*
5 *exercising its discretion to discipline a licensee under any other*
6 *provision of state law based upon the licensee's conviction under*
7 *Section 314 of the Penal Code.*

8 (3) *Any administrative adjudication proceeding under Chapter*
9 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
10 *2 of the Government Code that is fully adjudicated prior to January*
11 *1, 2008. A petition for reinstatement of a revoked or surrendered*
12 *license shall be considered a new proceeding for purposes of this*
13 *paragraph, and the prohibition against reinstating a license to an*
14 *individual who is required to register as a sex offender shall be*
15 *applicable.*

16 SEC. 147. *Section 4316.5 is added to the Business and*
17 *Professions Code, to read:*

18 4316.5. *Unless otherwise provided, on or after July 1, 2013,*
19 *the board shall post on its Internet Web site the following*
20 *information in its possession, custody, or control regarding every*
21 *licensee for which the board licenses:*

22 (a) *With regard to the status of every license, whether or not*
23 *the licensee or former licensee is in good standing, subject to a*
24 *temporary restraining order, subject to an interim suspension*
25 *order, subject to a restriction or cease practice ordered pursuant*
26 *to Section 23 of the Penal Code, or subject to any of the*
27 *enforcement actions described in Section 803.1.*

28 (b) *With regard to prior discipline of a licensee, whether or not*
29 *the licensee or former licensee has been subject to discipline by*
30 *the board or by the board of another state or jurisdiction, as*
31 *described in Section 803.1.*

32 (c) *Any felony conviction of a licensee reported to the board.*

33 (d) *All current accusations filed by the Attorney General,*
34 *including those accusations that are on appeal. For purposes of*
35 *this paragraph, "current accusation" means an accusation that*
36 *has not been dismissed, withdrawn, or settled, and has not been*
37 *finally decided upon by an administrative law judge and the board*
38 *unless an appeal of that decision is pending.*

39 (e) *Any malpractice judgment or arbitration award imposed*
40 *against a licensee and reported to the healing arts board.*

1 (f) Any hospital disciplinary action imposed against a licensee
2 that resulted in the termination or revocation of a licensee's
3 hospital staff privileges for a medical disciplinary cause or reason
4 pursuant to Section 805.

5 (g) Any misdemeanor conviction of a licensee that results in a
6 disciplinary action or an accusation that is not subsequently
7 withdrawn or dismissed.

8 (h) Appropriate disclaimers and explanatory statements to
9 accompany the above information, including an explanation of
10 what types of information are not disclosed. These disclaimers
11 and statements shall be developed by the board and shall be
12 adopted by regulation.

13 (i) The information provided on the Internet shall be in
14 accordance with the California Public Records Act (Chapter 3.5
15 (commencing with Section 6250) of Division 7 of Title 1 of the
16 Government Code) and the Information Practices Act of 1977
17 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
18 of Division 3 of the Civil Code) and shall comply with the
19 Department of Consumer Affairs Guidelines for Access to Public
20 Records.

21 (j) Information provided on the Internet may not include
22 personal information, unless otherwise provided pursuant to this
23 chapter, including the home telephone number, date of birth, or
24 social security number. The information may not include the
25 licensee's address, but may include the city and county of the
26 licensee's address of record.

27 SEC. 148. Section 4316.6 is added to the Business and
28 Professions Code, to read:

29 4316.6. (a) Unless otherwise provided, if a licensee possesses
30 a license or is otherwise authorized to practice in any state other
31 than California or by any agency of the federal government and
32 that license or authority is suspended or revoked outright, the
33 California license of the licensee shall be suspended automatically
34 for the duration of the suspension or revocation, unless terminated
35 or rescinded as provided in subdivision (c). The healing arts board
36 shall notify the licensee of the license suspension and of his or her
37 right to have the issue of penalty heard as provided in this section.

38 (b) Upon its own motion or for good cause shown, a healing
39 arts board may decline to impose or may set aside the suspension
40 when it appears to be in the interest of justice to do so, with due

1 regard to maintaining the integrity of, and confidence in, the
2 specific healing art.

3 (c) The issue of penalty shall be heard by an administrative law
4 judge sitting alone or with a panel of the board, in the discretion
5 of the board. A licensee may request a hearing on the penalty and
6 that hearing shall be held within 90 days from the date of the
7 request. If the order suspending or revoking the license or authority
8 to practice is overturned on appeal, any discipline ordered
9 pursuant to this section shall automatically cease. Upon a showing
10 to the administrative law judge or panel by the licensee that the
11 out-of-state action is not a basis for discipline in California, the
12 suspension shall be rescinded. If an accusation for permanent
13 discipline is not filed within 90 days of the suspension imposed
14 pursuant to this section, the suspension shall automatically
15 terminate.

16 (d) The record of the proceedings that resulted in the suspension
17 or revocation of the licensee's out-of-state license or authority to
18 practice, including a transcript of the testimony therein, may be
19 received in evidence.

20 (e) This section shall not apply to a licensee who maintains his
21 or her primary practice in California, as evidenced by having
22 maintained a practice in this state for not less than one year
23 immediately preceding the date of suspension or revocation.
24 Nothing in this section shall preclude a licensee's license from
25 being suspended pursuant to any other provision of law.

26 (f) This section shall not apply to a licensee whose license has
27 been surrendered, whose only discipline is a medical staff
28 disciplinary action at a federal hospital and not for medical
29 disciplinary cause or reason as that term is defined in Section 805,
30 or whose revocation or suspension has been stayed, even if the
31 licensee remains subject to terms of probation or other discipline.

32 (g) This section shall not apply to a suspension or revocation
33 imposed by a state that is based solely on the prior discipline of
34 the licensee by another state.

35 (h) The other provisions of this article setting forth a procedure
36 for the suspension or revocation of a licensee's license or
37 certificate shall not apply to summary suspensions issued pursuant
38 to this section. If a summary suspension has been issued pursuant
39 to this section, the licensee may request that the hearing on the

1 *penalty conducted pursuant to subdivision (c) be held at the same*
2 *time as a hearing on the accusation.*

3 *(i) A board that complies with Section 2310 shall not be subject*
4 *to the requirements of this section.*

5 *SEC. 149. Section 4375 is added to the Business and*
6 *Professions Code, to read:*

7 *4375. (a) It is the intent of the Legislature, through a request*
8 *in 2012 from the Joint Legislative Audit Committee, that the Bureau*
9 *of State Audits conduct a thorough performance audit of the*
10 *Pharmacists Recovery Program to evaluate the effectiveness and*
11 *efficiency of the program, and make recommendations regarding*
12 *the continuation of the program and any changes or reforms*
13 *required to ensure that pharmacists and intern pharmacists*
14 *participating in the program are appropriately monitored, and*
15 *the public is protected from pharmacists and intern pharmacists*
16 *who are impaired due to alcohol or drug abuse or mental or*
17 *physical illness. The audit shall be completed by January 1, 2013.*
18 *The board and its staff shall cooperate with the audit, and the*
19 *board shall provide data, information, and case files as requested*
20 *by the auditor to perform all of its duties. The provision of*
21 *confidential data, information, and case files by the board to the*
22 *auditor shall not constitute a waiver of any exemption from*
23 *disclosure or discovery or of any confidentiality protection or*
24 *privilege otherwise provided by law that is applicable to the data,*
25 *information, or case files.*

26 *(b) It is the intent of the Legislature that the audit shall be paid*
27 *for with funds from the Pharmacy Board Contingent Fund.*

28 *SEC. 150. Section 4526 is added to the Business and*
29 *Professions Code, to read:*

30 *4526. (a) The board may delegate to its executive officer the*
31 *authority to adopt a proposed default decision where an*
32 *administrative action to revoke a license has been filed and the*
33 *licensee has failed to file a notice of defense or to appear at the*
34 *hearing and a proposed default decision revoking the license has*
35 *been issued.*

36 *(b) The board may delegate to its executive officer the authority*
37 *to adopt a proposed settlement agreement where an administrative*
38 *action to revoke a license has been filed by the board and the*
39 *licensee has agreed to the revocation or surrender of his or her*
40 *license.*

1 (c) The executive officer shall, at scheduled board meetings,
2 report to the board the number of proposed default decisions or
3 proposed settlement agreements adopted pursuant to this section.

4 SEC. 151. Section 4526.1 is added to the Business and
5 Professions Code, to read:

6 4526.1. (a) Notwithstanding Section 11415.60 of the
7 Government Code, the board may enter into a settlement with a
8 licensee or applicant in lieu of the issuance of an accusation or
9 statement of issues against that licensee or applicant, as applicable.

10 (b) The settlement shall include language identifying the factual
11 basis for the action being taken and a list of the statutes or
12 regulations violated.

13 (c) A person who enters a settlement pursuant to this section is
14 not precluded from filing a petition, in the timeframe permitted by
15 law, to modify the terms of the settlement or petition for early
16 termination of probation, if probation is part of the settlement.

17 (d) Any settlement against a licensee executed pursuant to this
18 section shall be considered discipline and a public record and
19 shall be posted on the applicable board's Internet Web site. Any
20 settlement against an applicant executed pursuant to this section
21 shall be considered a public record and shall be posted on the
22 applicable board's Internet Web site.

23 (e) The executive officer shall, at scheduled board meetings,
24 report to the board the number of proposed settlement agreements
25 adopted pursuant to this section.

26 SEC. 152. Section 4526.2 is added to the Business and
27 Professions Code, to read:

28 4526.2. (a) The license of a licensee shall be suspended
29 automatically during any time that the licensee is incarcerated
30 after conviction of a felony, regardless of whether the conviction
31 has been appealed. The board shall, immediately upon receipt of
32 the certified copy of the record of conviction, determine whether
33 the license of the licensee has been automatically suspended by
34 virtue of his or her incarceration, and if so, the duration of that
35 suspension. The board shall notify the licensee in writing of the
36 license suspension and of his or her right to elect to have the issue
37 of penalty heard as provided in subdivision (d).

38 (b) Upon receipt of the certified copy of the record of conviction,
39 if after a hearing before an administrative law judge from the
40 Office of Administrative Hearings it is determined that the felony

1 for which the licensee was convicted was substantially related to
2 the qualifications, functions, or duties of a licensee, the board
3 shall suspend the license until the time for appeal has elapsed, if
4 no appeal has been taken, or until the judgment of conviction has
5 been affirmed on appeal or has otherwise become final, and until
6 further order of the board.

7 (c) Notwithstanding subdivision (b), a conviction of a charge
8 of violating any federal statute or regulation or any statute or
9 regulation of this state, regulating dangerous drugs or controlled
10 substances, or a conviction of Section 187, 261, 262, or 288 of the
11 Penal Code, shall be conclusively presumed to be substantially
12 related to the qualifications, functions, or duties of a licensee and
13 no hearing shall be held on this issue. However, upon its own
14 motion or for good cause shown, the board may decline to impose
15 or may set aside the suspension when it appears to be in the interest
16 of justice to do so, with due regard to maintaining the integrity of,
17 and confidence in, the practice regulated by the board.

18 (d) (1) Discipline may be ordered against a licensee in
19 accordance with the statutes and regulations of the board when
20 the time for appeal has elapsed, the judgment of conviction has
21 been affirmed on appeal, or an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent
23 order under Section 1203.4 of the Penal Code allowing the person
24 to withdraw his or her plea of guilty and to enter a plea of not
25 guilty, setting aside the verdict of guilty, or dismissing the
26 accusation, complaint, information, or indictment.

27 (2) The issue of penalty shall be heard by an administrative law
28 judge from the Office of Administrative Hearings. The hearing
29 shall not be had until the judgment of conviction has become final
30 or, irrespective of a subsequent order under Section 1203.4 of the
31 Penal Code, an order granting probation has been made
32 suspending the imposition of sentence; except that a licensee may,
33 at his or her option, elect to have the issue of penalty decided
34 before those time periods have elapsed. Where the licensee so
35 elects, the issue of penalty shall be heard in the manner described
36 in subdivision (b) at the hearing to determine whether the
37 conviction was substantially related to the qualifications, functions,
38 or duties of a licensee. If the conviction of a licensee who has made
39 this election is overturned on appeal, any discipline ordered
40 pursuant to this section shall automatically cease. Nothing in this

1 subdivision shall prohibit the board from pursuing disciplinary
2 action based on any cause other than the overturned conviction.

3 (e) The record of the proceedings resulting in a conviction,
4 including a transcript of the testimony in those proceedings, may
5 be received in evidence.

6 (f) Any other provision of law setting forth a procedure for the
7 suspension or revocation of a license issued by the board shall not
8 apply to proceedings conducted pursuant to this section.

9 SEC. 153. Section 4526.3 is added to the Business and
10 Professions Code, to read:

11 4526.3. (a) Except as otherwise provided, any proposed
12 decision or decision issued in accordance with the procedures set
13 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
14 Division 3 of Title 2 of the Government Code, that contains any
15 finding of fact that the licensee engaged in any act of sexual contact
16 with a patient, as defined in subdivision (c) of Section 729, or any
17 finding that the licensee has committed a sex offense, shall contain
18 an order revoking the license. The proposed decision shall not
19 contain any order staying the revocation of the licensee.

20 (b) As used in this section, the term sex offense shall mean any
21 of the following:

22 (1) Any offense for which registration is required by Section
23 290 of the Penal Code or a finding that a person committed such
24 an act.

25 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
26 or 647(a) or (d) of the Penal Code or a finding that a person
27 committed such an act.

28 (3) Any attempt to commit any of the offenses specified in this
29 section.

30 (4) Any offense committed or attempted in any other state or
31 against the laws of the United States which, if committed or
32 attempted in this state, would have been punishable as one or more
33 of the offenses specified in this section.

34 SEC. 154. Section 4526.4 is added to the Business and
35 Professions Code, to read:

36 4526.4. (a) Except as otherwise provided, with regard to an
37 individual who is required to register as a sex offender pursuant
38 to Section 290 of the Penal Code, or the equivalent in another
39 state or territory, under military law, or under federal law, the
40 board shall be subject to the following requirements:

1 (1) The board shall deny an application by the individual for
2 licensure in accordance with the procedures set forth in Chapter
3 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
4 2 of the Government Code.

5 (2) If the individual is licensed under this chapter, the board
6 shall promptly revoke the license of the individual in accordance
7 with the procedures set forth in Chapter 5 (commencing with
8 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
9 Code. The board shall not stay the revocation and place the license
10 on probation.

11 (3) The board shall not reinstate or reissue the individual's
12 license. The board shall not issue a stay of license denial nor place
13 the license on probation.

14 (b) This section shall not apply to any of the following:

15 (1) An individual who has been relieved under Section 290.5 of
16 the Penal Code of his or her duty to register as a sex offender, or
17 whose duty to register has otherwise been formally terminated
18 under California law or the law of the jurisdiction that requires
19 his or her registration as a sex offender.

20 (2) An individual who is required to register as a sex offender
21 pursuant to Section 290 of the Penal Code solely because of a
22 misdemeanor conviction under Section 314 of the Penal Code.
23 However, nothing in this paragraph shall prohibit the board from
24 exercising its discretion to discipline a licensee under any other
25 provision of state law based upon the licensee's conviction under
26 Section 314 of the Penal Code.

27 (3) Any administrative adjudication proceeding under Chapter
28 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
29 2 of the Government Code that is fully adjudicated prior to January
30 1, 2008. A petition for reinstatement of a revoked or surrendered
31 license shall be considered a new proceeding for purposes of this
32 paragraph, and the prohibition against reinstating a license to an
33 individual who is required to register as a sex offender shall be
34 applicable.

35 SEC. 155. Section 4526.5 is added to the Business and
36 Professions Code, to read:

37 4526.5. (a) Notwithstanding any other provision of law making
38 a communication between a licensee and his or her patients a
39 privileged communication, those provisions shall not apply to
40 investigations or proceedings conducted by the board. Members

1 of the board, deputies, employees, agents, the office of the Attorney
2 General, and representatives of the board shall keep in confidence
3 during the course of investigations the names of any patients whose
4 records are reviewed and may not disclose or reveal those names,
5 except as is necessary during the course of an investigation, unless
6 and until proceedings are instituted. The authority under this
7 subdivision to examine records of patients in the office of a licensee
8 is limited to records of patients who have complained to the board
9 about that licensee.

10 (b) Notwithstanding any other provision of law, the Attorney
11 General and his or her investigative agents, and the board and its
12 investigators and representatives may inquire into any alleged
13 violation of the laws under the jurisdiction of the board or any
14 other federal or state law, regulation, or rule relevant to the
15 practice regulated by the board, whichever is applicable, and may
16 inspect documents relevant to those investigations in accordance
17 with the following procedures:

18 (1) Any document relevant to an investigation may be inspected,
19 and copies may be obtained, where a patient provides written
20 authorization.

21 (2) Any document relevant to the business operations of a
22 licensee, and not involving medical records attributable to
23 identifiable patients, may be inspected and copied where relevant
24 to an investigation of a licensee.

25 (c) In all cases where documents are inspected or copies of
26 those documents are received, their acquisition or review shall be
27 arranged so as not to unnecessarily disrupt the medical and
28 business operations of the licensee or of the facility where the
29 records are kept or used.

30 (d) Where certified documents are lawfully requested from
31 licensees in accordance with this section by the Attorney General
32 or his or her agents or deputies, or investigators of any board, the
33 documents shall be provided within 10 business days of receipt of
34 the request, unless the licensee is unable to provide the certified
35 documents within this time period for good cause, including, but
36 not limited to, physical inability to access the records in the time
37 allowed due to illness or travel. Failure to produce requested
38 certified documents or copies thereof, after being informed of the
39 required deadline, shall constitute unprofessional conduct. A board
40 may use its authority to cite and fine a licensee for any violation

1 of this section. This remedy is in addition to any other authority
2 of the board to sanction a licensee for a delay in producing
3 requested records.

4 (e) Searches conducted of the office or medical facility of any
5 licensee shall not interfere with the recordkeeping format or
6 preservation needs of any licensee necessary for the lawful care
7 of patients.

8 (f) The licensee shall cooperate with the board in furnishing
9 information or assistance as may be required, including, but not
10 limited to, participation in an interview with investigators or
11 representatives of the healing arts board.

12 (g) This section shall not apply to a licensee who does not have
13 access to, and control over, certified medical records or other
14 types of documents that belong to or are controlled by a health
15 facility or clinic.

16 SEC. 156. Section 4526.6 is added to the Business and
17 Professions Code, to read:

18 4526.6. (a) (1) Notwithstanding any other provision of law,
19 a licensee who fails or refuses to comply with a request for the
20 certified medical records of a patient that is accompanied by that
21 patient's written authorization for release of records to a board
22 together with a notice citing this section and describing the
23 penalties for failure to comply with this section shall be required
24 to pay to the board a civil penalty of up to one thousand dollars
25 (\$1,000) per day for each day that the documents have not been
26 produced after the 15th day, up to ten thousand dollars (\$10,000),
27 unless the licensee is unable to provide the documents within this
28 time period for good cause.

29 (2) A health care facility shall comply with a request for the
30 certified medical records of a patient that is accompanied by that
31 patient's written authorization for release of records to a board
32 together with a notice citing this section and describing the
33 penalties for failure to comply with this section. Failure to provide
34 the authorizing patient's certified medical records to the board
35 within 15 days of receiving the request, authorization, and notice
36 shall subject the health care facility to a civil penalty, payable to
37 the healing arts board, of up to one thousand dollars (\$1,000) per
38 day for each day that the documents have not been produced after
39 the 15th day, up to ten thousand dollars (\$10,000), unless the
40 health care facility is unable to provide the documents within this

1 *time period for good cause. This paragraph shall not require health*
2 *care facilities to assist the board in obtaining the patient's*
3 *authorization. The board shall pay the reasonable costs of copying*
4 *the certified medical records, but shall not be required to make*
5 *that payment prior to the production of the medical records.*

6 *(b) (1) A licensee who fails or refuses to comply with a court*
7 *order, issued in the enforcement of a subpoena, mandating the*
8 *release of records to the board, shall pay to the board a civil*
9 *penalty of up to one thousand dollars (\$1,000) per day for each*
10 *day that the documents have not been produced after the date by*
11 *which the court order requires the documents to be produced, up*
12 *to ten thousand dollars (\$10,000), unless it is determined that the*
13 *order is unlawful or invalid. Any statute of limitations applicable*
14 *to the filing of an accusation by the board shall be tolled during*
15 *the period the licensee is out of compliance with the court order*
16 *and during any related appeals.*

17 *(2) Any licensee who fails or refuses to comply with a court*
18 *order, issued in the enforcement of a subpoena, mandating the*
19 *release of records to a board is guilty of a misdemeanor punishable*
20 *by a fine payable to the board not to exceed five thousand dollars*
21 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
22 *it is not paid by the next succeeding renewal date. Any statute of*
23 *limitations applicable to the filing of an accusation by the board*
24 *shall be tolled during the period the licensee is out of compliance*
25 *with the court order and during any related appeals.*

26 *(3) A health care facility that fails or refuses to comply with a*
27 *court order, issued in the enforcement of a subpoena, mandating*
28 *the release of patient records to the board, that is accompanied*
29 *by a notice citing this section and describing the penalties for*
30 *failure to comply with this section, shall pay to the board a civil*
31 *penalty of up to one thousand dollars (\$1,000) per day for each*
32 *day that the documents have not been produced, up to ten thousand*
33 *dollars (\$10,000), after the date by which the court order requires*
34 *the documents to be produced, unless it is determined that the*
35 *order is unlawful or invalid. Any statute of limitations applicable*
36 *to the filing of an accusation by the board against a licensee shall*
37 *be tolled during the period the health care facility is out of*
38 *compliance with the court order and during any related appeals.*

39 *(4) Any health care facility that fails or refuses to comply with*
40 *a court order, issued in the enforcement of a subpoena, mandating*

1 *the release of records to a healing arts board is guilty of a*
2 *misdemeanor punishable by a fine payable to the board not to*
3 *exceed five thousand dollars (\$5,000). Any statute of limitations*
4 *applicable to the filing of an accusation by the healing arts board*
5 *against a licensee shall be tolled during the period the health care*
6 *facility is out of compliance with the court order and during any*
7 *related appeals.*

8 *(c) Multiple acts by a licensee in violation of subdivision (b)*
9 *shall be punishable by a fine not to exceed five thousand dollars*
10 *(\$5,000) or by imprisonment in a county jail not exceeding six*
11 *months, or by both that fine and imprisonment. Multiple acts by*
12 *a health care facility in violation of subdivision (b) shall be*
13 *punishable by a fine not to exceed five thousand dollars (\$5,000),*
14 *shall be reported to the State Department of Public Health, and*
15 *shall be considered as grounds for disciplinary action with respect*
16 *to licensure, including suspension or revocation of the license or*
17 *certificate.*

18 *(d) A failure or refusal of a licensee to comply with a court*
19 *order, issued in the enforcement of a subpoena, mandating the*
20 *release of records to the healing arts board constitutes*
21 *unprofessional conduct and is grounds for suspension or revocation*
22 *of his or her license.*

23 *(e) Imposition of the civil penalties authorized by this section*
24 *shall be in accordance with the Administrative Procedure Act*
25 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
26 *2 of the Government Code). Any civil penalties paid to, or received*
27 *by, the board pursuant to this section shall be deposited into the*
28 *fund administered by the board.*

29 *(f) For purposes of this section, “certified medical records”*
30 *means a copy of the patient’s medical records authenticated by*
31 *the licensee or health care facility, as appropriate, on a form*
32 *prescribed by the licensee’s board.*

33 *(g) For purposes of this section, a “health care facility” means*
34 *a clinic or health facility licensed or exempt from licensure*
35 *pursuant to Division 2 (commencing with Section 1200) of the*
36 *Health and Safety Code.*

37 *(h) If a board complies with Section 1684.1, 2225.5, or 2969,*
38 *that board shall not be subject to the requirements of this section.*

39 *(i) This section shall not apply to a licensee who does not have*
40 *access to, or control over, certified medical records or other types*

1 of documents that belong to or are controlled by a health facility
2 or clinic.

3 SEC. 157. Section 4526.8 is added to the Business and
4 Professions Code, to read:

5 4526.8. Unless otherwise provided, on or after July 1, 2013,
6 the board shall post on its Internet Web site the following
7 information, including the name and the license number, in its
8 possession, custody, or control regarding every licensee for which
9 the board licenses:

10 (a) With regard to the status of every license, whether or not
11 the licensee or former licensee is in good standing, subject to a
12 temporary restraining order, subject to an interim suspension
13 order, subject to a restriction or cease practice ordered pursuant
14 to Section 23 of the Penal Code, or subject to any of the
15 enforcement actions described in Section 803.1.

16 (b) With regard to prior discipline of a licensee, whether or not
17 the licensee or former licensee has been subject to discipline by
18 the board or by the board of another state or jurisdiction, as
19 described in Section 803.1.

20 (c) Any felony conviction of a licensee reported to the board.

21 (d) All current accusations filed by the Attorney General,
22 including those accusations that are on appeal. For purposes of
23 this paragraph, "current accusation" means an accusation that
24 has not been dismissed, withdrawn, or settled, and has not been
25 finally decided upon by an administrative law judge and the board
26 unless an appeal of that decision is pending.

27 (e) Any malpractice judgment or arbitration award imposed
28 against a licensee and reported to the board.

29 (f) Any hospital disciplinary action imposed against a licensee
30 that resulted in the termination or revocation of a licensee's
31 hospital staff privileges for a medical disciplinary cause or reason
32 pursuant to Section 4526.6 or 805.

33 (g) Any misdemeanor conviction of a licensee that results in a
34 disciplinary action or an accusation that is not subsequently
35 withdrawn or dismissed.

36 (h) Appropriate disclaimers and explanatory statements to
37 accompany the above information, including an explanation of
38 what types of information are not disclosed. These disclaimers
39 and statements shall be developed by the board and shall be
40 adopted by regulation.

1 (i) *The information provided on the Internet shall be in*
2 *accordance with the California Public Records Act (Chapter 3.5*
3 *(commencing with Section 6250) of Division 7 of Title 1 of the*
4 *Government Code) and the Information Practices Act of 1977*
5 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
6 *of Division 3 of the Civil Code) and shall comply with the*
7 *Department of Consumer Affairs Guidelines for Access to Public*
8 *Records.*

9 (j) *Information provided on the Internet may not include*
10 *personal information, unless otherwise provided pursuant to this*
11 *chapter, including the home telephone number, date of birth, or*
12 *social security number. The information may not include the*
13 *licensee's address, but may include the city and county of the*
14 *licensee's address of record.*

15 *SEC. 158. Section 4526.9 is added to the Business and*
16 *Professions Code, to read:*

17 4526.9. (a) *Unless otherwise provided, if a licensee possesses*
18 *a license or is otherwise authorized to practice in any state other*
19 *than California or by any agency of the federal government and*
20 *that license or authority is suspended or revoked outright, the*
21 *California license of the licensee shall be suspended automatically*
22 *for the duration of the suspension or revocation, unless terminated*
23 *or rescinded as provided in subdivision (c). The healing arts board*
24 *shall notify the licensee of the license suspension and of his or her*
25 *right to have the issue of penalty heard as provided in this section.*

26 (b) *Upon its own motion or for good cause shown, the board*
27 *may decline to impose or may set aside the suspension when it*
28 *appears to be in the interest of justice to do so, with due regard*
29 *to maintaining the integrity of, and confidence in, the specific*
30 *healing art.*

31 (c) *The issue of penalty shall be heard by an administrative law*
32 *judge sitting alone or with a panel of the board, in the discretion*
33 *of the board. A licensee may request a hearing on the penalty and*
34 *that hearing shall be held within 90 days from the date of the*
35 *request. If the order suspending or revoking the license or authority*
36 *to practice is overturned on appeal, any discipline ordered*
37 *pursuant to this section shall automatically cease. Upon a showing*
38 *to the administrative law judge or panel by the licensee that the*
39 *out-of-state action is not a basis for discipline in California, the*
40 *suspension shall be rescinded. If an accusation for permanent*

1 *discipline is not filed within 90 days of the suspension imposed*
2 *pursuant to this section, the suspension shall automatically*
3 *terminate.*

4 *(d) The record of the proceedings that resulted in the suspension*
5 *or revocation of the licensee's out-of-state license or authority to*
6 *practice, including a transcript of the testimony therein, may be*
7 *received in evidence.*

8 *(e) This section shall not apply to a licensee who maintains his*
9 *or her primary practice in California, as evidenced by having*
10 *maintained a practice in this state for not less than one year*
11 *immediately preceding the date of suspension or revocation.*
12 *Nothing in this section shall preclude a licensee's license from*
13 *being suspended pursuant to any other provision of law.*

14 *(f) This section shall not apply to a licensee whose license has*
15 *been surrendered, whose only discipline is a medical staff*
16 *disciplinary action at a federal hospital and not for medical*
17 *disciplinary cause or reason as that term is defined in Section 805,*
18 *or whose revocation or suspension has been stayed, even if the*
19 *licensee remains subject to terms of probation or other discipline.*

20 *(g) This section shall not apply to a suspension or revocation*
21 *imposed by a state that is based solely on the prior discipline of*
22 *the licensee by another state.*

23 *(h) The other provisions of this article setting forth a procedure*
24 *for the suspension or revocation of a licensee's license or*
25 *certificate shall not apply to summary suspensions issued pursuant*
26 *to this section. If a summary suspension has been issued pursuant*
27 *to this section, the licensee may request that the hearing on the*
28 *penalty conducted pursuant to subdivision (c) be held at the same*
29 *time as a hearing on the accusation.*

30 *(i) A board that complies with Section 2310 shall not be subject*
31 *to the requirements of this section.*

32 *SEC. 159. Section 4888 is added to the Business and*
33 *Professions Code, to read:*

34 *4888. (a) The board may delegate to its executive officer the*
35 *authority to adopt a proposed default decision where an*
36 *administrative action to revoke a license has been filed and the*
37 *licensee has failed to file a notice of defense or to appear at the*
38 *hearing and a proposed default decision revoking the license has*
39 *been issued.*

1 **(b)** *The board may delegate to its executive officer the authority*
2 *to adopt a proposed settlement agreement where an administrative*
3 *action to revoke a license has been filed by the board and the*
4 *licensee has agreed to the revocation or surrender of his or her*
5 *license.*

6 **(c)** *The executive officer shall, at scheduled board meetings,*
7 *report to the board the number of proposed default decisions or*
8 *proposed settlement agreements adopted pursuant to this section.*

9 **SEC. 160.** *Section 4888.1 is added to the Business and*
10 *Professions Code, to read:*

11 **4888.1.** *(a) Notwithstanding Section 11415.60 of the*
12 *Government Code, the board may enter into a settlement with a*
13 *licensee or applicant in lieu of the issuance of an accusation or*
14 *statement of issues against that licensee or applicant, as applicable.*

15 **(b)** *The settlement shall include language identifying the factual*
16 *basis for the action being taken and a list of the statutes or*
17 *regulations violated.*

18 **(c)** *A person who enters a settlement pursuant to this section is*
19 *not precluded from filing a petition, in the timeframe permitted by*
20 *law, to modify the terms of the settlement or petition for early*
21 *termination of probation, if probation is part of the settlement.*

22 **(d)** *Any settlement against a licensee executed pursuant to this*
23 *section shall be considered discipline and a public record and*
24 *shall be posted on the applicable board's Internet Web site. Any*
25 *settlement against an applicant executed pursuant to this section*
26 *shall be considered a public record and shall be posted on the*
27 *applicable board's Internet Web site.*

28 **(e)** *The executive officer shall, at scheduled board meetings,*
29 *report to the board the number of proposed settlement agreements*
30 *adopted pursuant to this section.*

31 **SEC. 161.** *Section 4888.2 is added to the Business and*
32 *Professions Code, to read:*

33 **4888.2.** *(a) The license of a licensee shall be suspended*
34 *automatically during any time that the licensee is incarcerated*
35 *after conviction of a felony, regardless of whether the conviction*
36 *has been appealed. The board shall, immediately upon receipt of*
37 *the certified copy of the record of conviction, determine whether*
38 *the license of the licensee has been automatically suspended by*
39 *virtue of his or her incarceration, and if so, the duration of that*
40 *suspension. The board shall notify the licensee in writing of the*

1 license suspension and of his or her right to elect to have the issue
2 of penalty heard as provided in subdivision (d).

3 (b) Upon receipt of the certified copy of the record of conviction,
4 if after a hearing before an administrative law judge from the
5 Office of Administrative Hearings it is determined that the felony
6 for which the licensee was convicted was substantially related to
7 the qualifications, functions, or duties of a licensee, the board
8 shall suspend the license until the time for appeal has elapsed, if
9 no appeal has been taken, or until the judgment of conviction has
10 been affirmed on appeal or has otherwise become final, and until
11 further order of the board.

12 (c) Notwithstanding subdivision (b), a conviction of a charge
13 of violating any federal statute or regulation or any statute or
14 regulation of this state, regulating dangerous drugs or controlled
15 substances, or a conviction of Section 187, 261, 262, or 288 of the
16 Penal Code, shall be conclusively presumed to be substantially
17 related to the qualifications, functions, or duties of a licensee and
18 no hearing shall be held on this issue. However, upon its own
19 motion or for good cause shown, the board may decline to impose
20 or may set aside the suspension when it appears to be in the interest
21 of justice to do so, with due regard to maintaining the integrity of,
22 and confidence in, the practice regulated by the board.

23 (d) (1) Discipline may be ordered against a licensee in
24 accordance with the statutes and regulations of the board when
25 the time for appeal has elapsed, the judgment of conviction has
26 been affirmed on appeal, or an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent
28 order under Section 1203.4 of the Penal Code allowing the person
29 to withdraw his or her plea of guilty and to enter a plea of not
30 guilty, setting aside the verdict of guilty, or dismissing the
31 accusation, complaint, information, or indictment.

32 (2) The issue of penalty shall be heard by an administrative law
33 judge from the Office of Administrative Hearings. The hearing
34 shall not be had until the judgment of conviction has become final
35 or, irrespective of a subsequent order under Section 1203.4 of the
36 Penal Code, an order granting probation has been made
37 suspending the imposition of sentence; except that a licensee may,
38 at his or her option, elect to have the issue of penalty decided
39 before those time periods have elapsed. Where the licensee so
40 elects, the issue of penalty shall be heard in the manner described

1 in subdivision (b) at the hearing to determine whether the
2 conviction was substantially related to the qualifications, functions,
3 or duties of a licensee. If the conviction of a licensee who has made
4 this election is overturned on appeal, any discipline ordered
5 pursuant to this section shall automatically cease. Nothing in this
6 subdivision shall prohibit the board from pursuing disciplinary
7 action based on any cause other than the overturned conviction.

8 (e) The record of the proceedings resulting in a conviction,
9 including a transcript of the testimony in those proceedings, may
10 be received in evidence.

11 (f) Any other provision of law setting forth a procedure for the
12 suspension or revocation of a license issued by the board shall not
13 apply to proceedings conducted pursuant to this section.

14 SEC. 162. Section 4888.3 is added to the Business and
15 Professions Code, to read:

16 4888.3. (a) Except as otherwise provided, any proposed
17 decision or decision issued in accordance with the procedures set
18 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code, that contains any
20 finding of fact that the licensee engaged in any act of sexual contact
21 with a patient, as defined in subdivision (c) of Section 729, or any
22 finding that the licensee has committed a sex offense, shall contain
23 an order revoking the license. The proposed decision shall not
24 contain any order staying the revocation of the licensee.

25 (b) As used in this section, the term sex offense shall mean any
26 of the following:

27 (1) Any offense for which registration is required by Section
28 290 of the Penal Code or a finding that a person committed such
29 an act.

30 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
31 or 647(a) or (d) of the Penal Code or a finding that a person
32 committed such an act.

33 (3) Any attempt to commit any of the offenses specified in this
34 section.

35 (4) Any offense committed or attempted in any other state or
36 against the laws of the United States which, if committed or
37 attempted in this state, would have been punishable as one or more
38 of the offenses specified in this section.

39 SEC. 163. Section 4888.4 is added to the Business and
40 Professions Code, to read:

1 4888.4. (a) Except as otherwise provided, with regard to an
2 individual who is required to register as a sex offender pursuant
3 to Section 290 of the Penal Code, or the equivalent in another
4 state or territory, under military law, or under federal law, the
5 board shall be subject to the following requirements:

6 (1) The board shall deny an application by the individual for
7 licensure in accordance with the procedures set forth in Chapter
8 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
9 2 of the Government Code.

10 (2) If the individual is licensed under this chapter, the board
11 shall promptly revoke the license of the individual in accordance
12 with the procedures set forth in Chapter 5 (commencing with
13 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
14 Code. The board shall not stay the revocation and place the license
15 on probation.

16 (3) The board shall not reinstate or reissue the individual's
17 license. The board shall not issue a stay of license denial nor place
18 the license on probation.

19 (b) This section shall not apply to any of the following:

20 (1) An individual who has been relieved under Section 290.5 of
21 the Penal Code of his or her duty to register as a sex offender, or
22 whose duty to register has otherwise been formally terminated
23 under California law or the law of the jurisdiction that requires
24 his or her registration as a sex offender.

25 (2) An individual who is required to register as a sex offender
26 pursuant to Section 290 of the Penal Code solely because of a
27 misdemeanor conviction under Section 314 of the Penal Code.
28 However, nothing in this paragraph shall prohibit the board from
29 exercising its discretion to discipline a licensee under any other
30 provision of state law based upon the licensee's conviction under
31 Section 314 of the Penal Code.

32 (3) Any administrative adjudication proceeding under Chapter
33 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
34 2 of the Government Code that is fully adjudicated prior to January
35 1, 2008. A petition for reinstatement of a revoked or surrendered
36 license shall be considered a new proceeding for purposes of this
37 paragraph, and the prohibition against reinstating a license to an
38 individual who is required to register as a sex offender shall be
39 applicable.

1 SEC. 164. Section 4888.5 is added to the Business and
2 Professions Code, to read:

3 4888.5. (a) Notwithstanding any other provision of law, any
4 employer of a licensee shall report to the board the suspension or
5 termination for cause, or any resignation in lieu of suspension or
6 termination for cause, of any licensee in its employ within 15
7 business days. The report shall not be made until after the
8 conclusion of the review process specified in Section 52.3 of Title
9 2 of the California Code of Regulations and *Skelly v. State*
10 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
11 required reporting shall not constitute a waiver of confidentiality
12 of medical records. The information reported or disclosed shall
13 be kept confidential except as provided in subdivision (c) of Section
14 800 and shall not be subject to discovery in civil cases.

15 (b) The information to be reported by the employer shall include
16 the name and license number of the licensee involved, a
17 description of the facts and circumstances of the suspension or
18 termination for cause, any resignation in lieu of suspension or
19 termination for cause, and any other relevant information deemed
20 appropriate by the employer.

21 (c) The board shall be entitled to inspect and copy the following
22 documents in the record for any suspension or termination for
23 cause, or any resignation in lieu of suspension or termination for
24 cause, resulting in action that is required to be reported pursuant
25 to this section:

26 (1) Any statement for suspension or termination of the licensee.

27 (2) Any document or exhibits relevant to the suspension or
28 termination.

29 (d) If, during the investigation by the board of the cause for the
30 termination or suspension or resignation of the licensee, it is found
31 that there has been a violation of existing state or federal law, the
32 board shall report the violation to the appropriate agency.

33 (e) For purposes of this section, “suspension or termination for
34 cause” or “resignation in lieu of suspension or termination for
35 cause” is defined as resignation, suspension, or termination from
36 employment for any of the following reasons:

37 (1) Use of controlled substances or alcohol to the extent that it
38 impairs the licensee’s ability to safely practice.

39 (2) Unlawful sale of a controlled substance or other prescription
40 items.

1 (3) *Patient or client abuse, neglect, physical harm, or sexual*
2 *contact with a patient or client.*

3 (4) *Gross negligence or incompetence.*

4 (5) *Theft from a patient or client, any other employee, or the*
5 *employer.*

6 (f) *As used in this section, the following definitions apply:*

7 (1) *“Gross negligence” means a substantial departure from the*
8 *standard of care, which, under similar circumstances, would have*
9 *ordinarily been exercised by a competent licensee, and which has*
10 *or could have resulted in harm to the consumer. An exercise of so*
11 *slight a degree of care as to justify the belief that there was a*
12 *conscious disregard or indifference for the health, safety, or*
13 *welfare of the consumer shall be considered a substantial departure*
14 *from the standard of care.*

15 (2) *“Incompetence” means the lack of possession of, and the*
16 *failure to exercise that degree of learning, skill, care, and*
17 *experience ordinarily possessed by, a responsible licensee.*

18 (3) *“Willful” means a knowing and intentional violation of a*
19 *known legal duty.*

20 (g) (1) *Willful failure of an employer to make a report required*
21 *by this section is punishable by an administrative fine not to exceed*
22 *one hundred thousand dollars (\$100,000) per violation.*

23 (2) *Any failure of an employer, other than willful failure, to*
24 *make a report required by this section is punishable by an*
25 *administrative fine not to exceed fifty thousand dollars (\$50,000).*

26 (h) *The board shall investigate the circumstances underlying*
27 *any report received pursuant to this section within 30 days to*
28 *determine if an interim suspension order or temporary restraining*
29 *order should be issued. The board shall otherwise provide timely*
30 *disposition of the reports received pursuant to this section.*

31 (i) *The board shall send to the licensee a copy of the report*
32 *along with the reasons for the filing of the report and notice*
33 *advising the licensee of his or her right to submit additional*
34 *statements or other information to the board.*

35 (j) *Pursuant to Section 43.8 of the Civil Code, no person shall*
36 *incur any civil penalty as a result of making any report required*
37 *by this article.*

38 (k) *No report is required under this section where a report of*
39 *the action taken is already required under Section 805.*

1 *SEC. 165. Section 4888.6 is added to the Business and*
2 *Professions Code, to read:*

3 *4888.6. Unless otherwise provided, on or after July 1, 2013,*
4 *the board shall post on its Internet Web site the following*
5 *information, including the name and license number, in its*
6 *possession, custody, or control regarding every licensee for which*
7 *the board licenses:*

8 *(a) With regard to the status of every license, whether or not*
9 *the licensee or former licensee is in good standing, subject to a*
10 *temporary restraining order, subject to an interim suspension*
11 *order, subject to a restriction or cease practice ordered pursuant*
12 *to Section 23 of the Penal Code, or subject to any of the*
13 *enforcement actions described in Section 803.1.*

14 *(b) With regard to prior discipline of a licensee, whether or not*
15 *the licensee or former licensee has been subject to discipline by*
16 *the board or by the board of another state or jurisdiction, as*
17 *described in Section 803.1.*

18 *(c) Any felony conviction of a licensee reported to the board.*

19 *(d) All current accusations filed by the Attorney General,*
20 *including those accusations that are on appeal. For purposes of*
21 *this paragraph, "current accusation" means an accusation that*
22 *has not been dismissed, withdrawn, or settled, and has not been*
23 *finally decided upon by an administrative law judge and the board*
24 *unless an appeal of that decision is pending.*

25 *(e) Any malpractice judgment or arbitration award imposed*
26 *against a licensee and reported to the board.*

27 *(f) Any hospital disciplinary action imposed against a licensee*
28 *that resulted in the termination or revocation of a licensee's*
29 *hospital staff privileges for a medical disciplinary cause or reason*
30 *pursuant to Section 805.*

31 *(g) Any misdemeanor conviction of a licensee that results in a*
32 *disciplinary action or an accusation that is not subsequently*
33 *withdrawn or dismissed.*

34 *(h) Appropriate disclaimers and explanatory statements to*
35 *accompany the above information, including an explanation of*
36 *what types of information are not disclosed. These disclaimers*
37 *and statements shall be developed by the board and shall be*
38 *adopted by regulation.*

39 *(i) The information provided on the Internet shall be in*
40 *accordance with the California Public Records Act (Chapter 3.5*

1 (commencing with Section 6250) of Division 7 of Title 1 of the
2 Government Code) and the Information Practices Act of 1977
3 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
4 of Division 3 of the Civil Code) and shall comply with the
5 Department of Consumer Affairs Guidelines for Access to Public
6 Records.

7 (j) Information provided on the Internet may not include
8 personal information, unless otherwise provided pursuant to this
9 chapter, including the home telephone number, date of birth, or
10 social security number. The information may not include the
11 licensee's address, but may include the city and county of the
12 licensee's address of record.

13 SEC. 166. Section 4888.7 is added to the Business and
14 Professions Code, to read:

15 4888.7. (a) Unless otherwise provided, if a licensee possesses
16 a license or is otherwise authorized to practice in any state other
17 than California or by any agency of the federal government and
18 that license or authority is suspended or revoked outright, the
19 California license of the licensee shall be suspended automatically
20 for the duration of the suspension or revocation, unless terminated
21 or rescinded as provided in subdivision (c). The board shall notify
22 the licensee of the license suspension and of his or her right to
23 have the issue of penalty heard as provided in this section.

24 (b) Upon its own motion or for good cause shown, the board
25 may decline to impose or may set aside the suspension when it
26 appears to be in the interest of justice to do so, with due regard
27 to maintaining the integrity of, and confidence in, the specific
28 healing art.

29 (c) The issue of penalty shall be heard by an administrative law
30 judge sitting alone or with a panel of the board, in the discretion
31 of the board. A licensee may request a hearing on the penalty and
32 that hearing shall be held within 90 days from the date of the
33 request. If the order suspending or revoking the license or authority
34 to practice is overturned on appeal, any discipline ordered
35 pursuant to this section shall automatically cease. Upon a showing
36 to the administrative law judge or panel by the licensee that the
37 out-of-state action is not a basis for discipline in California, the
38 suspension shall be rescinded. If an accusation for permanent
39 discipline is not filed within 90 days of the suspension imposed

1 *pursuant to this section, the suspension shall automatically*
2 *terminate.*

3 *(d) The record of the proceedings that resulted in the suspension*
4 *or revocation of the licensee's out-of-state license or authority to*
5 *practice, including a transcript of the testimony therein, may be*
6 *received in evidence.*

7 *(e) This section shall not apply to a licensee who maintains his*
8 *or her primary practice in California, as evidenced by having*
9 *maintained a practice in this state for not less than one year*
10 *immediately preceding the date of suspension or revocation.*
11 *Nothing in this section shall preclude a licensee's license from*
12 *being suspended pursuant to any other provision of law.*

13 *(f) This section shall not apply to a licensee whose license has*
14 *been surrendered, whose only discipline is a medical staff*
15 *disciplinary action at a federal hospital and not for medical*
16 *disciplinary cause or reason as that term is defined in Section 805,*
17 *or whose revocation or suspension has been stayed, even if the*
18 *licensee remains subject to terms of probation or other discipline.*

19 *(g) This section shall not apply to a suspension or revocation*
20 *imposed by a state that is based solely on the prior discipline of*
21 *the licensee by another state.*

22 *(h) The other provisions of this article setting forth a procedure*
23 *for the suspension or revocation of a licensee's license or*
24 *certificate shall not apply to summary suspensions issued pursuant*
25 *to this section. If a summary suspension has been issued pursuant*
26 *to this section, the licensee may request that the hearing on the*
27 *penalty conducted pursuant to subdivision (c) be held at the same*
28 *time as a hearing on the accusation.*

29 *(i) A board that complies with Section 2310 shall not be subject*
30 *to the requirements of this section.*

31 *SEC. 167. Section 4964.1 is added to the Business and*
32 *Professions Code, to read:*

33 *4964.1. (a) The board may delegate to its executive officer the*
34 *authority to adopt a proposed default decision where an*
35 *administrative action to revoke a license has been filed and the*
36 *licensee has failed to file a notice of defense or to appear at the*
37 *hearing and a proposed default decision revoking the license has*
38 *been issued.*

39 *(b) The board may delegate to its executive officer the authority*
40 *to adopt a proposed settlement agreement where an administrative*

1 *action to revoke a license has been filed by the board and the*
2 *licensee has agreed to the revocation or surrender of his or her*
3 *license.*

4 *(c) The executive officer shall, at scheduled board meetings,*
5 *report to the board the number of proposed default decisions or*
6 *proposed settlement agreements adopted pursuant to this section.*

7 *SEC. 168. Section 4964.2 is added to the Business and*
8 *Professions Code, to read:*

9 *4964.2. (a) Notwithstanding Section 11415.60 of the*
10 *Government Code, the board may enter into a settlement with a*
11 *licensee or applicant in lieu of the issuance of an accusation or*
12 *statement of issues against that licensee or applicant, as applicable.*

13 *(b) The settlement shall include language identifying the factual*
14 *basis for the action being taken and a list of the statutes or*
15 *regulations violated.*

16 *(c) A person who enters a settlement pursuant to this section is*
17 *not precluded from filing a petition, in the timeframe permitted by*
18 *law, to modify the terms of the settlement or petition for early*
19 *termination of probation, if probation is part of the settlement.*

20 *(d) Any settlement against a licensee executed pursuant to this*
21 *section shall be considered discipline and a public record and*
22 *shall be posted on the applicable board's Internet Web site. Any*
23 *settlement against an applicant executed pursuant to this section*
24 *shall be considered a public record and shall be posted on the*
25 *applicable board's Internet Web site.*

26 *(e) The executive officer shall, at scheduled board meetings,*
27 *report to the board the number of proposed settlement agreements*
28 *adopted pursuant to this section.*

29 *SEC. 169. Section 4964.3 is added to the Business and*
30 *Professions Code, to read:*

31 *4964.3. (a) The license of a licensee shall be suspended*
32 *automatically during any time that the licensee is incarcerated*
33 *after conviction of a felony, regardless of whether the conviction*
34 *has been appealed. The board shall, immediately upon receipt of*
35 *the certified copy of the record of conviction, determine whether*
36 *the license of the licensee has been automatically suspended by*
37 *virtue of his or her incarceration, and if so, the duration of that*
38 *suspension. The board shall notify the licensee in writing of the*
39 *license suspension and of his or her right to elect to have the issue*
40 *of penalty heard as provided in subdivision (d).*

1 ***(b) Upon receipt of the certified copy of the record of conviction,***
2 ***if after a hearing before an administrative law judge from the***
3 ***Office of Administrative Hearings it is determined that the felony***
4 ***for which the licensee was convicted was substantially related to***
5 ***the qualifications, functions, or duties of a licensee, the board***
6 ***shall suspend the license until the time for appeal has elapsed, if***
7 ***no appeal has been taken, or until the judgment of conviction has***
8 ***been affirmed on appeal or has otherwise become final, and until***
9 ***further order of the board.***

10 ***(c) Notwithstanding subdivision (b), a conviction of a charge***
11 ***of violating any federal statute or regulation or any statute or***
12 ***regulation of this state, regulating dangerous drugs or controlled***
13 ***substances, or a conviction of Section 187, 261, 262, or 288 of the***
14 ***Penal Code, shall be conclusively presumed to be substantially***
15 ***related to the qualifications, functions, or duties of a licensee and***
16 ***no hearing shall be held on this issue. However, upon its own***
17 ***motion or for good cause shown, the board may decline to impose***
18 ***or may set aside the suspension when it appears to be in the interest***
19 ***of justice to do so, with due regard to maintaining the integrity of,***
20 ***and confidence in, the practice regulated by the board.***

21 ***(d) (1) Discipline may be ordered against a licensee in***
22 ***accordance with the statutes and regulations of the board when***
23 ***the time for appeal has elapsed, the judgment of conviction has***
24 ***been affirmed on appeal, or an order granting probation is made***
25 ***suspending the imposition of sentence, irrespective of a subsequent***
26 ***order under Section 1203.4 of the Penal Code allowing the person***
27 ***to withdraw his or her plea of guilty and to enter a plea of not***
28 ***guilty, setting aside the verdict of guilty, or dismissing the***
29 ***accusation, complaint, information, or indictment.***

30 ***(2) The issue of penalty shall be heard by an administrative law***
31 ***judge from the Office of Administrative Hearings. The hearing***
32 ***shall not be had until the judgment of conviction has become final***
33 ***or, irrespective of a subsequent order under Section 1203.4 of the***
34 ***Penal Code, an order granting probation has been made***
35 ***suspending the imposition of sentence; except that a licensee may,***
36 ***at his or her option, elect to have the issue of penalty decided***
37 ***before those time periods have elapsed. Where the licensee so***
38 ***elects, the issue of penalty shall be heard in the manner described***
39 ***in subdivision (b) at the hearing to determine whether the***
40 ***conviction was substantially related to the qualifications, functions,***

1 or duties of a licensee. If the conviction of a licensee who has made
2 this election is overturned on appeal, any discipline ordered
3 pursuant to this section shall automatically cease. Nothing in this
4 subdivision shall prohibit the board from pursuing disciplinary
5 action based on any cause other than the overturned conviction.

6 (e) The record of the proceedings resulting in a conviction,
7 including a transcript of the testimony in those proceedings, may
8 be received in evidence.

9 (f) Any other provision of law setting forth a procedure for the
10 suspension or revocation of a license issued by the board shall not
11 apply to proceedings conducted pursuant to this section.

12 SEC. 170. Section 4964.4 is added to the Business and
13 Professions Code, to read:

14 4964.4. (a) Except as otherwise provided, any proposed
15 decision or decision issued in accordance with the procedures set
16 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code, that contains any
18 finding of fact that the licensee engaged in any act of sexual contact
19 with a patient, as defined in subdivision (c) of Section 729, or any
20 finding that the licensee has committed a sex offense, shall contain
21 an order revoking the license. The proposed decision shall not
22 contain any order staying the revocation of the licensee.

23 (b) As used in this section, the term sex offense shall mean any
24 of the following:

25 (1) Any offense for which registration is required by Section
26 290 of the Penal Code or a finding that a person committed such
27 an act.

28 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
29 or 647(a) or (d) of the Penal Code or a finding that a person
30 committed such an act.

31 (3) Any attempt to commit any of the offenses specified in this
32 section.

33 (4) Any offense committed or attempted in any other state or
34 against the laws of the United States which, if committed or
35 attempted in this state, would have been punishable as one or more
36 of the offenses specified in this section.

37 SEC. 171. Section 4964.55 is added to the Business and
38 Professions Code, to read:

39 4964.55. (a) Except as otherwise provided, with regard to an
40 individual who is required to register as a sex offender pursuant

1 to Section 290 of the Penal Code, or the equivalent in another
2 state or territory, under military law, or under federal law, the
3 board shall be subject to the following requirements:

4 (1) The board shall deny an application by the individual for
5 licensure in accordance with the procedures set forth in Chapter
6 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code.

8 (2) If the individual is licensed under this chapter, the board
9 shall promptly revoke the license of the individual in accordance
10 with the procedures set forth in Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code. The board shall not stay the revocation and place the license
13 on probation.

14 (3) The board shall not reinstate or reissue the individual's
15 license. The board shall not issue a stay of license denial nor place
16 the license on probation.

17 (b) This section shall not apply to any of the following:

18 (1) An individual who has been relieved under Section 290.5 of
19 the Penal Code of his or her duty to register as a sex offender, or
20 whose duty to register has otherwise been formally terminated
21 under California law or the law of the jurisdiction that requires
22 his or her registration as a sex offender.

23 (2) An individual who is required to register as a sex offender
24 pursuant to Section 290 of the Penal Code solely because of a
25 misdemeanor conviction under Section 314 of the Penal Code.
26 However, nothing in this paragraph shall prohibit the board from
27 exercising its discretion to discipline a licensee under any other
28 provision of state law based upon the licensee's conviction under
29 Section 314 of the Penal Code.

30 (3) Any administrative adjudication proceeding under Chapter
31 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code that is fully adjudicated prior to January
33 1, 2008. A petition for reinstatement of a revoked or surrendered
34 license shall be considered a new proceeding for purposes of this
35 paragraph, and the prohibition against reinstating a license to an
36 individual who is required to register as a sex offender shall be
37 applicable.

38 SEC. 172. Section 4964.6 is added to the Business and
39 Professions Code, to read:

1 4964.6. (a) Notwithstanding any other provision of law making
2 a communication between a licensee and his or her patients a
3 privileged communication, those provisions shall not apply to
4 investigations or proceedings conducted by the board. Members
5 of the board, deputies, employees, agents, the office of the Attorney
6 General, and representatives of the board shall keep in confidence
7 during the course of investigations the names of any patients whose
8 records are reviewed and may not disclose or reveal those names,
9 except as is necessary during the course of an investigation, unless
10 and until proceedings are instituted. The authority under this
11 subdivision to examine records of patients in the office of a licensee
12 is limited to records of patients who have complained to the board
13 about that licensee.

14 (b) Notwithstanding any other provision of law, the Attorney
15 General and his or her investigative agents, and the board and its
16 investigators and representatives may inquire into any alleged
17 violation of the laws under the jurisdiction of the board or any
18 other federal or state law, regulation, or rule relevant to the
19 practice regulated by the board, whichever is applicable, and may
20 inspect documents relevant to those investigations in accordance
21 with the following procedures:

22 (1) Any document relevant to an investigation may be inspected,
23 and copies may be obtained, where a patient provides written
24 authorization.

25 (2) Any document relevant to the business operations of a
26 licensee, and not involving medical records attributable to
27 identifiable patients, may be inspected and copied where relevant
28 to an investigation of a licensee.

29 (c) In all cases where documents are inspected or copies of
30 those documents are received, their acquisition or review shall be
31 arranged so as not to unnecessarily disrupt the medical and
32 business operations of the licensee or of the facility where the
33 records are kept or used.

34 (d) Where certified documents are lawfully requested from
35 licensees in accordance with this section by the Attorney General
36 or his or her agents or deputies, or investigators of any board, the
37 documents shall be provided within 10 business days of receipt of
38 the request, unless the licensee is unable to provide the certified
39 documents within this time period for good cause, including, but
40 not limited to, physical inability to access the records in the time

1 *allowed due to illness or travel. Failure to produce requested*
2 *certified documents or copies thereof, after being informed of the*
3 *required deadline, shall constitute unprofessional conduct. A board*
4 *may use its authority to cite and fine a licensee for any violation*
5 *of this section. This remedy is in addition to any other authority*
6 *of the healing arts board to sanction a licensee for a delay in*
7 *producing requested records.*

8 *(e) Searches conducted of the office or medical facility of any*
9 *licensee shall not interfere with the recordkeeping format or*
10 *preservation needs of any licensee necessary for the lawful care*
11 *of patients.*

12 *(f) The licensee shall cooperate with the board in furnishing*
13 *information or assistance as may be required, including, but not*
14 *limited to, participation in an interview with investigators or*
15 *representatives of the healing arts board.*

16 *(g) This section shall not apply to a licensee who does not have*
17 *access to, and control over, certified medical records or other*
18 *types of documents that belong to or are controlled by a health*
19 *facility or clinic.*

20 *SEC. 173. Section 4964.7 is added to the Business and*
21 *Professions Code, to read:*

22 *4964.7. (a) (1) Notwithstanding any other provision of law,*
23 *a licensee who fails or refuses to comply with a request for the*
24 *certified medical records of a patient that is accompanied by that*
25 *patient's written authorization for release of records to a board*
26 *together with a notice citing this section and describing the*
27 *penalties for failure to comply with this section shall be required*
28 *to pay to the board a civil penalty of up to one thousand dollars*
29 *(\$1,000) per day for each day that the documents have not been*
30 *produced after the 15th day, up to ten thousand dollars (\$10,000),*
31 *unless the licensee is unable to provide the documents within this*
32 *time period for good cause.*

33 *(2) A health care facility shall comply with a request for the*
34 *certified medical records of a patient that is accompanied by that*
35 *patient's written authorization for release of records to a board*
36 *together with a notice citing this section and describing the*
37 *penalties for failure to comply with this section. Failure to provide*
38 *the authorizing patient's certified medical records to the board*
39 *within 15 days of receiving the request, authorization, and notice*
40 *shall subject the health care facility to a civil penalty, payable to*

1 the healing arts board, of up to one thousand dollars (\$1,000) per
2 day for each day that the documents have not been produced after
3 the 15th day, up to ten thousand dollars (\$10,000), unless the
4 health care facility is unable to provide the documents within this
5 time period for good cause. This paragraph shall not require health
6 care facilities to assist the board in obtaining the patient's
7 authorization. The board shall pay the reasonable costs of copying
8 the certified medical records, but shall not be required to make
9 that payment prior to the production of the medical records.

10 (b) (1) A licensee who fails or refuses to comply with a court
11 order, issued in the enforcement of a subpoena, mandating the
12 release of records to the board, shall pay to the healing arts board
13 a civil penalty of up to one thousand dollars (\$1,000) per day for
14 each day that the documents have not been produced after the date
15 by which the court order requires the documents to be produced,
16 up to ten thousand dollars (\$10,000), unless it is determined that
17 the order is unlawful or invalid. Any statute of limitations
18 applicable to the filing of an accusation by the healing arts board
19 shall be tolled during the period the licensee is out of compliance
20 with the court order and during any related appeals.

21 (2) Any licensee who fails or refuses to comply with a court
22 order, issued in the enforcement of a subpoena, mandating the
23 release of records to a board is guilty of a misdemeanor punishable
24 by a fine payable to the board not to exceed five thousand dollars
25 (\$5,000). The fine shall be added to the licensee's renewal fee if
26 it is not paid by the next succeeding renewal date. Any statute of
27 limitations applicable to the filing of an accusation by the board
28 shall be tolled during the period the licensee is out of compliance
29 with the court order and during any related appeals.

30 (3) A health care facility that fails or refuses to comply with a
31 court order, issued in the enforcement of a subpoena, mandating
32 the release of patient records to the board, that is accompanied
33 by a notice citing this section and describing the penalties for
34 failure to comply with this section, shall pay to the board a civil
35 penalty of up to one thousand dollars (\$1,000) per day for each
36 day that the documents have not been produced, up to ten thousand
37 dollars (\$10,000), after the date by which the court order requires
38 the documents to be produced, unless it is determined that the
39 order is unlawful or invalid. Any statute of limitations applicable
40 to the filing of an accusation by the board against a licensee shall

1 *be tolled during the period the health care facility is out of*
2 *compliance with the court order and during any related appeals.*

3 *(4) Any health care facility that fails or refuses to comply with*
4 *a court order, issued in the enforcement of a subpoena, mandating*
5 *the release of records to the board is guilty of a misdemeanor*
6 *punishable by a fine payable to the board not to exceed five*
7 *thousand dollars (\$5,000). Any statute of limitations applicable*
8 *to the filing of an accusation by the board against a licensee shall*
9 *be tolled during the period the health care facility is out of*
10 *compliance with the court order and during any related appeals.*

11 *(c) Multiple acts by a licensee in violation of subdivision (b)*
12 *shall be punishable by a fine not to exceed five thousand dollars*
13 *(\$5,000) or by imprisonment in a county jail not exceeding six*
14 *months, or by both that fine and imprisonment. Multiple acts by*
15 *a health care facility in violation of subdivision (b) shall be*
16 *punishable by a fine not to exceed five thousand dollars (\$5,000),*
17 *shall be reported to the State Department of Public Health, and*
18 *shall be considered as grounds for disciplinary action with respect*
19 *to licensure, including suspension or revocation of the license or*
20 *certificate.*

21 *(d) A failure or refusal of a licensee to comply with a court*
22 *order, issued in the enforcement of a subpoena, mandating the*
23 *release of records to the board constitutes unprofessional conduct*
24 *and is grounds for suspension or revocation of his or her license.*

25 *(e) Imposition of the civil penalties authorized by this section*
26 *shall be in accordance with the Administrative Procedure Act*
27 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
28 *2 of the Government Code). Any civil penalties paid to, or received*
29 *by, the board pursuant to this section shall be deposited into the*
30 *fund administered by the board.*

31 *(f) For purposes of this section, “certified medical records”*
32 *means a copy of the patient’s medical records authenticated by*
33 *the licensee or health care facility, as appropriate, on a form*
34 *prescribed by the licensee’s board.*

35 *(g) For purposes of this section, a “health care facility” means*
36 *a clinic or health facility licensed or exempt from licensure*
37 *pursuant to Division 2 (commencing with Section 1200) of the*
38 *Health and Safety Code.*

39 *(h) If a board complies with Section 1684.1, 2225.5, or 2969,*
40 *that board shall not be subject to the requirements of this section.*

1 (i) *This section shall not apply to a licensee who does not have*
2 *access to, or control over, certified medical records or other types*
3 *of documents that belong to or are controlled by a health facility*
4 *or clinic.*

5 SEC. 174. *Section 4964.8 is added to the Business and*
6 *Professions Code, to read:*

7 4964.8. (a) *Notwithstanding any other provision of law, any*
8 *employer of a licensee shall report to the board the suspension or*
9 *termination for cause, or any resignation in lieu of suspension or*
10 *termination for cause, of any licensee in its employ within 15*
11 *business days. The report shall not be made until after the*
12 *conclusion of the review process specified in Section 52.3 of Title*
13 *2 of the California Code of Regulations and Skelly v. State*
14 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
15 *required reporting shall not constitute a waiver of confidentiality*
16 *of medical records. The information reported or disclosed shall*
17 *be kept confidential except as provided in subdivision (c) of Section*
18 *800 and shall not be subject to discovery in civil cases.*

19 (b) *The information to be reported by the employer shall include*
20 *the name and license number of the licensee involved, a*
21 *description of the facts and circumstances of the suspension or*
22 *termination for cause, any resignation in lieu of suspension or*
23 *termination for cause, and any other relevant information deemed*
24 *appropriate by the employer.*

25 (c) *The board shall be entitled to inspect and copy the following*
26 *documents in the record for any suspension or termination for*
27 *cause, or any resignation in lieu of suspension or termination for*
28 *cause, resulting in action that is required to be reported pursuant*
29 *to this section:*

30 (1) *Any statement for suspension or termination of the licensee.*

31 (2) *Any document or exhibits relevant to the suspension or*
32 *termination.*

33 (d) *If, during the investigation by the board of the cause for the*
34 *termination or suspension or resignation of the licensee, it is found*
35 *that there has been a violation of existing state or federal law, the*
36 *board shall report the violation to the appropriate agency.*

37 (e) *For purposes of this section, “suspension or termination for*
38 *cause” or “resignation in lieu of suspension or termination for*
39 *cause” is defined as resignation, suspension, or termination from*
40 *employment for any of the following reasons:*

1 (1) *Use of controlled substances or alcohol to the extent that it*
2 *impairs the licensee's ability to safely practice.*

3 (2) *Unlawful sale of a controlled substance or other prescription*
4 *items.*

5 (3) *Patient or client abuse, neglect, physical harm, or sexual*
6 *contact with a patient or client.*

7 (4) *Gross negligence or incompetence.*

8 (5) *Theft from a patient or client, any other employee, or the*
9 *employer.*

10 (f) *As used in this section, the following definitions apply:*

11 (1) *"Gross negligence" means a substantial departure from the*
12 *standard of care, which, under similar circumstances, would have*
13 *ordinarily been exercised by a competent licensee, and which has*
14 *or could have resulted in harm to the consumer. An exercise of so*
15 *slight a degree of care as to justify the belief that there was a*
16 *conscious disregard or indifference for the health, safety, or*
17 *welfare of the consumer shall be considered a substantial departure*
18 *from the standard of care.*

19 (2) *"Incompetence" means the lack of possession of, and the*
20 *failure to exercise that degree of learning, skill, care, and*
21 *experience ordinarily possessed by, a responsible licensee.*

22 (3) *"Willful" means a knowing and intentional violation of a*
23 *known legal duty.*

24 (g) (1) *Willful failure of an employer to make a report required*
25 *by this section is punishable by an administrative fine not to exceed*
26 *one hundred thousand dollars (\$100,000) per violation.*

27 (2) *Any failure of an employer, other than willful failure, to*
28 *make a report required by this section is punishable by an*
29 *administrative fine not to exceed fifty thousand dollars (\$50,000).*

30 (h) *The board shall investigate the circumstances underlying*
31 *any report received pursuant to this section within 30 days to*
32 *determine if an interim suspension order or temporary restraining*
33 *order should be issued. The board shall otherwise provide timely*
34 *disposition of the reports received pursuant to this section.*

35 (i) *The board shall send to the licentiate a copy of the report*
36 *along with the reasons for the filing of the report and notice*
37 *advising the licentiate of his or her right to submit additional*
38 *statements or other information to the board.*

1 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
2 incur any civil penalty as a result of making any report required
3 by this article.

4 (k) No report is required under this section where a report of
5 the action taken is already required under Section 805.

6 SEC. 175. Section 4964.9 is added to the Business and
7 Professions Code, to read:

8 4964.9. Unless otherwise provided, on or after July 1, 2013,
9 the board shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the board licenses:

13 (a) With regard to the status of every license, whether or not
14 the licensee or former licensee is in good standing, subject to a
15 temporary restraining order, subject to an interim suspension
16 order, subject to a restriction or cease practice ordered pursuant
17 to Section 23 of the Penal Code, or subject to any of the
18 enforcement actions described in Section 803.1.

19 (b) With regard to prior discipline of a licensee, whether or not
20 the licensee or former licensee has been subject to discipline by
21 the board or by the board of another state or jurisdiction, as
22 described in Section 803.1.

23 (c) Any felony conviction of a licensee reported to the board.

24 (d) All current accusations filed by the Attorney General,
25 including those accusations that are on appeal. For purposes of
26 this paragraph, "current accusation" means an accusation that
27 has not been dismissed, withdrawn, or settled, and has not been
28 finally decided upon by an administrative law judge and the board
29 unless an appeal of that decision is pending.

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the board.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 4964.7 or 805.

36 (g) Any misdemeanor conviction of a licensee that results in a
37 disciplinary action or an accusation that is not subsequently
38 withdrawn or dismissed.

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 *what types of information are not disclosed. These disclaimers*
2 *and statements shall be developed by the board and shall be*
3 *adopted by regulation.*

4 *(i) The information provided on the Internet shall be in*
5 *accordance with the California Public Records Act (Chapter 3.5*
6 *(commencing with Section 6250) of Division 7 of Title 1 of the*
7 *Government Code) and the Information Practices Act of 1977*
8 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
9 *of Division 3 of the Civil Code) and shall comply with the*
10 *Department of Consumer Affairs Guidelines for Access to Public*
11 *Records.*

12 *(j) Information provided on the Internet may not include*
13 *personal information, unless otherwise provided pursuant to this*
14 *chapter, including the home telephone number, date of birth, or*
15 *social security number. The information may not include the*
16 *licensee's address, but may include the city and county of the*
17 *licensee's address of record.*

18 *SEC. 176. Section 4964.10 is added to the Business and*
19 *Professions Code, to read:*

20 *4964.10. (a) Unless otherwise provided, if a licensee possesses*
21 *a license or is otherwise authorized to practice in any state other*
22 *than California or by any agency of the federal government and*
23 *that license or authority is suspended or revoked outright, the*
24 *California license of the licensee shall be suspended automatically*
25 *for the duration of the suspension or revocation, unless terminated*
26 *or rescinded as provided in subdivision (c). The board shall notify*
27 *the licensee of the license suspension and of his or her right to*
28 *have the issue of penalty heard as provided in this section.*

29 *(b) Upon its own motion or for good cause shown, the board*
30 *may decline to impose or may set aside the suspension when it*
31 *appears to be in the interest of justice to do so, with due regard*
32 *to maintaining the integrity of, and confidence in, the specific*
33 *healing art.*

34 *(c) The issue of penalty shall be heard by an administrative law*
35 *judge sitting alone or with a panel of the board, in the discretion*
36 *of the board. A licensee may request a hearing on the penalty and*
37 *that hearing shall be held within 90 days from the date of the*
38 *request. If the order suspending or revoking the license or authority*
39 *to practice is overturned on appeal, any discipline ordered*
40 *pursuant to this section shall automatically cease. Upon a showing*

1 to the administrative law judge or panel by the licensee that the
2 out-of-state action is not a basis for discipline in California, the
3 suspension shall be rescinded. If an accusation for permanent
4 discipline is not filed within 90 days of the suspension imposed
5 pursuant to this section, the suspension shall automatically
6 terminate.

7 (d) The record of the proceedings that resulted in the suspension
8 or revocation of the licensee's out-of-state license or authority to
9 practice, including a transcript of the testimony therein, may be
10 received in evidence.

11 (e) This section shall not apply to a licensee who maintains his
12 or her primary practice in California, as evidenced by having
13 maintained a practice in this state for not less than one year
14 immediately preceding the date of suspension or revocation.
15 Nothing in this section shall preclude a licensee's license from
16 being suspended pursuant to any other provision of law.

17 (f) This section shall not apply to a licensee whose license has
18 been surrendered, whose only discipline is a medical staff
19 disciplinary action at a federal hospital and not for medical
20 disciplinary cause or reason as that term is defined in Section 805,
21 or whose revocation or suspension has been stayed, even if the
22 licensee remains subject to terms of probation or other discipline.

23 (g) This section shall not apply to a suspension or revocation
24 imposed by a state that is based solely on the prior discipline of
25 the licensee by another state.

26 (h) The other provisions of this article setting forth a procedure
27 for the suspension or revocation of a licensee's license or
28 certificate shall not apply to summary suspensions issued pursuant
29 to this section. If a summary suspension has been issued pursuant
30 to this section, the licensee may request that the hearing on the
31 penalty conducted pursuant to subdivision (c) be held at the same
32 time as a hearing on the accusation.

33 (i) A board that complies with Section 2310 shall not be subject
34 to the requirements of this section.

35 SEC. 177. Section 4982.26 of the Business and Professions
36 Code is amended to read:

37 4982.26. (a) The board shall revoke any license issued under
38 this chapter upon a decision made in accordance with the
39 procedures set forth in Chapter 5 (commencing with Section 11500)
40 of Part 1 of Division 3 of Title 2 of the Government Code, that

contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 178. Section 4990.44 is added to the Business and Professions Code, to read:

4990.44. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the

1 licensee has agreed to the revocation or surrender of his or her
2 license.

3 (c) The executive officer shall, at scheduled board meetings,
4 report to the board the number of proposed default decisions or
5 proposed settlement agreements adopted pursuant to this section.

6 SEC. 179. Section 4990.45 is added to the Business and
7 Professions Code, to read:

8 4990.45. (a) Notwithstanding Section 11415.60 of the
9 Government Code, the board may enter into a settlement with a
10 licensee or applicant in lieu of the issuance of an accusation or
11 statement of issues against that licensee or applicant, as applicable.

12 (b) The settlement shall include language identifying the factual
13 basis for the action being taken and a list of the statutes or
14 regulations violated.

15 (c) A person who enters a settlement pursuant to this section is
16 not precluded from filing a petition, in the timeframe permitted by
17 law, to modify the terms of the settlement or petition for early
18 termination of probation, if probation is part of the settlement.

19 (d) Any settlement against a licensee executed pursuant to this
20 section shall be considered discipline and a public record and
21 shall be posted on the applicable board's Internet Web site. Any
22 settlement against an applicant executed pursuant to this section
23 shall be considered a public record and shall be posted on the
24 applicable board's Internet Web site.

25 (e) The executive officer shall, at scheduled board meetings,
26 report to the board the number of proposed settlement agreements
27 adopted pursuant to this section.

28 SEC. 180. Section 4990.46 is added to the Business and
29 Professions Code, to read:

30 4990.46. (a) The license of a licensee shall be suspended
31 automatically during any time that the licensee is incarcerated
32 after conviction of a felony, regardless of whether the conviction
33 has been appealed. The board shall, immediately upon receipt of
34 the certified copy of the record of conviction, determine whether
35 the license of the licensee has been automatically suspended by
36 virtue of his or her incarceration, and if so, the duration of that
37 suspension. The board shall notify the licensee in writing of the
38 license suspension and of his or her right to elect to have the issue
39 of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions,

1 or duties of a licensee. If the conviction of a licensee who has made
2 this election is overturned on appeal, any discipline ordered
3 pursuant to this section shall automatically cease. Nothing in this
4 subdivision shall prohibit the board from pursuing disciplinary
5 action based on any cause other than the overturned conviction.

6 (e) The record of the proceedings resulting in a conviction,
7 including a transcript of the testimony in those proceedings, may
8 be received in evidence.

9 (f) Any other provision of law setting forth a procedure for the
10 suspension or revocation of a license issued by the board shall not
11 apply to proceedings conducted pursuant to this section.

12 SEC. 181. Section 4990.47 is added to the Business and
13 Professions Code, to read:

14 4990.47. (a) Except as otherwise provided, any proposed
15 decision or decision issued in accordance with the procedures set
16 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code, that contains any
18 finding of fact that the licensee engaged in any act of sexual contact
19 with a patient, as defined in subdivision (c) of Section 729, or any
20 finding that the licensee has committed a sex offense, shall contain
21 an order revoking the license. The proposed decision shall not
22 contain any order staying the revocation of the licensee.

23 (b) As used in this section, the term sex offense shall mean any
24 of the following:

25 (1) Any offense for which registration is required by Section
26 290 of the Penal Code or a finding that a person committed such
27 an act.

28 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
29 or 647(a) or (d) of the Penal Code or a finding that a person
30 committed such an act.

31 (3) Any attempt to commit any of the offenses specified in this
32 section.

33 (4) Any offense committed or attempted in any other state or
34 against the laws of the United States which, if committed or
35 attempted in this state, would have been punishable as one or more
36 of the offenses specified in this section.

37 SEC. 182. Section 4990.48 is added to the Business and
38 Professions Code, to read:

39 4990.48. (a) Except as otherwise provided, with regard to an
40 individual who is required to register as a sex offender pursuant

1 to Section 290 of the Penal Code, or the equivalent in another
2 state or territory, under military law, or under federal law, the
3 board shall be subject to the following requirements:

4 (1) The board shall deny an application by the individual for
5 licensure in accordance with the procedures set forth in Chapter
6 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code.

8 (2) If the individual is licensed under this chapter, the board
9 shall promptly revoke the license of the individual in accordance
10 with the procedures set forth in Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code. The board shall not stay the revocation and place the license
13 on probation.

14 (3) The board shall not reinstate or reissue the individual's
15 license. The board shall not issue a stay of license denial nor place
16 the license on probation.

17 (b) This section shall not apply to any of the following:

18 (1) An individual who has been relieved under Section 290.5 of
19 the Penal Code of his or her duty to register as a sex offender, or
20 whose duty to register has otherwise been formally terminated
21 under California law or the law of the jurisdiction that requires
22 his or her registration as a sex offender.

23 (2) An individual who is required to register as a sex offender
24 pursuant to Section 290 of the Penal Code solely because of a
25 misdemeanor conviction under Section 314 of the Penal Code.
26 However, nothing in this paragraph shall prohibit the board from
27 exercising its discretion to discipline a licensee under any other
28 provision of state law based upon the licensee's conviction under
29 Section 314 of the Penal Code.

30 (3) Any administrative adjudication proceeding under Chapter
31 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code that is fully adjudicated prior to January
33 1, 2008. A petition for reinstatement of a revoked or surrendered
34 license shall be considered a new proceeding for purposes of this
35 paragraph, and the prohibition against reinstating a license to an
36 individual who is required to register as a sex offender shall be
37 applicable.

38 SEC. 183. Section 4990.49 is added to the Business and
39 Professions Code, to read:

1 4990.49. (a) Notwithstanding any other provision of law
2 making a communication between a licensee and his or her patients
3 a privileged communication, those provisions shall not apply to
4 investigations or proceedings conducted by the board. Members
5 of the board, deputies, employees, agents, the office of the Attorney
6 General, and representatives of the board shall keep in confidence
7 during the course of investigations the names of any patients whose
8 records are reviewed and may not disclose or reveal those names,
9 except as is necessary during the course of an investigation, unless
10 and until proceedings are instituted. The authority under this
11 subdivision to examine records of patients in the office of a licensee
12 is limited to records of patients who have complained to the board
13 about that licensee.

14 (b) Notwithstanding any other provision of law, the Attorney
15 General and his or her investigative agents, and the board and its
16 investigators and representatives may inquire into any alleged
17 violation of the laws under the jurisdiction of the board or any
18 other federal or state law, regulation, or rule relevant to the
19 practice regulated by the board, whichever is applicable, and may
20 inspect documents relevant to those investigations in accordance
21 with the following procedures:

22 (1) Any document relevant to an investigation may be inspected,
23 and copies may be obtained, where a patient provides written
24 authorization.

25 (2) Any document relevant to the business operations of a
26 licensee, and not involving medical records attributable to
27 identifiable patients, may be inspected and copied where relevant
28 to an investigation of a licensee.

29 (c) In all cases where documents are inspected or copies of
30 those documents are received, their acquisition or review shall be
31 arranged so as not to unnecessarily disrupt the medical and
32 business operations of the licensee or of the facility where the
33 records are kept or used.

34 (d) Where certified documents are lawfully requested from
35 licensees in accordance with this section by the Attorney General
36 or his or her agents or deputies, or investigators of any board, the
37 documents shall be provided within 10 business days of receipt of
38 the request, unless the licensee is unable to provide the certified
39 documents within this time period for good cause, including, but
40 not limited to, physical inability to access the records in the time

1 *allowed due to illness or travel. Failure to produce requested*
2 *certified documents or copies thereof, after being informed of the*
3 *required deadline, shall constitute unprofessional conduct. A board*
4 *may use its authority to cite and fine a licensee for any violation*
5 *of this section. This remedy is in addition to any other authority*
6 *of the board to sanction a licensee for a delay in producing*
7 *requested records.*

8 *(e) Searches conducted of the office or medical facility of any*
9 *licensee shall not interfere with the recordkeeping format or*
10 *preservation needs of any licensee necessary for the lawful care*
11 *of patients.*

12 *(f) The licensee shall cooperate with the board in furnishing*
13 *information or assistance as may be required, including, but not*
14 *limited to, participation in an interview with investigators or*
15 *representatives of the board.*

16 *(g) This section shall not apply to a licensee who does not have*
17 *access to, and control over, certified medical records or other*
18 *types of documents that belong to or are controlled by a health*
19 *facility or clinic.*

20 *SEC. 184. Section 4990.50 is added to the Business and*
21 *Professions Code, to read:*

22 *4990.50. (a) (1) Notwithstanding any other provision of law,*
23 *a licensee who fails or refuses to comply with a request for the*
24 *certified medical records of a patient that is accompanied by that*
25 *patient's written authorization for release of records to a board*
26 *together with a notice citing this section and describing the*
27 *penalties for failure to comply with this section shall be required*
28 *to pay to the board a civil penalty of up to one thousand dollars*
29 *(\$1,000) per day for each day that the documents have not been*
30 *produced after the 15th day, up to ten thousand dollars (\$10,000),*
31 *unless the licensee is unable to provide the documents within this*
32 *time period for good cause.*

33 *(2) A health care facility shall comply with a request for the*
34 *certified medical records of a patient that is accompanied by that*
35 *patient's written authorization for release of records to a board*
36 *together with a notice citing this section and describing the*
37 *penalties for failure to comply with this section. Failure to provide*
38 *the authorizing patient's certified medical records to the board*
39 *within 15 days of receiving the request, authorization, and notice*
40 *shall subject the health care facility to a civil penalty, payable to*

1 the board, of up to one thousand dollars (\$1,000) per day for each
2 day that the documents have not been produced after the 15th day,
3 up to ten thousand dollars (\$10,000), unless the health care facility
4 is unable to provide the documents within this time period for good
5 cause. This paragraph shall not require health care facilities to
6 assist the board in obtaining the patient's authorization. The board
7 shall pay the reasonable costs of copying the certified medical
8 records, but shall not be required to make that payment prior to
9 the production of the medical records.

10 (b) (1) A licensee who fails or refuses to comply with a court
11 order, issued in the enforcement of a subpoena, mandating the
12 release of records to the board, shall pay to the board a civil
13 penalty of up to one thousand dollars (\$1,000) per day for each
14 day that the documents have not been produced after the date by
15 which the court order requires the documents to be produced, up
16 to ten thousand dollars (\$10,000), unless it is determined that the
17 order is unlawful or invalid. Any statute of limitations applicable
18 to the filing of an accusation by the board shall be tolled during
19 the period the licensee is out of compliance with the court order
20 and during any related appeals.

21 (2) Any licensee who fails or refuses to comply with a court
22 order, issued in the enforcement of a subpoena, mandating the
23 release of records to a board is guilty of a misdemeanor punishable
24 by a fine payable to the board not to exceed five thousand dollars
25 (\$5,000). The fine shall be added to the licensee's renewal fee if
26 it is not paid by the next succeeding renewal date. Any statute of
27 limitations applicable to the filing of an accusation by the board
28 shall be tolled during the period the licensee is out of compliance
29 with the court order and during any related appeals.

30 (3) A health care facility that fails or refuses to comply with a
31 court order, issued in the enforcement of a subpoena, mandating
32 the release of patient records to the board, that is accompanied
33 by a notice citing this section and describing the penalties for
34 failure to comply with this section, shall pay to the board a civil
35 penalty of up to one thousand dollars (\$1,000) per day for each
36 day that the documents have not been produced, up to ten thousand
37 dollars (\$10,000), after the date by which the court order requires
38 the documents to be produced, unless it is determined that the
39 order is unlawful or invalid. Any statute of limitations applicable
40 to the filing of an accusation by the board against a licensee shall

1 *be tolled during the period the health care facility is out of*
2 *compliance with the court order and during any related appeals.*

3 *(4) Any health care facility that fails or refuses to comply with*
4 *a court order, issued in the enforcement of a subpoena, mandating*
5 *the release of records to the board is guilty of a misdemeanor*
6 *punishable by a fine payable to the board not to exceed five*
7 *thousand dollars (\$5,000). Any statute of limitations applicable*
8 *to the filing of an accusation by the healing arts board against a*
9 *licensee shall be tolled during the period the health care facility*
10 *is out of compliance with the court order and during any related*
11 *appeals.*

12 *(c) Multiple acts by a licensee in violation of subdivision (b)*
13 *shall be punishable by a fine not to exceed five thousand dollars*
14 *(\$5,000) or by imprisonment in a county jail not exceeding six*
15 *months, or by both that fine and imprisonment. Multiple acts by*
16 *a health care facility in violation of subdivision (b) shall be*
17 *punishable by a fine not to exceed five thousand dollars (\$5,000),*
18 *shall be reported to the State Department of Public Health, and*
19 *shall be considered as grounds for disciplinary action with respect*
20 *to licensure, including suspension or revocation of the license or*
21 *certificate.*

22 *(d) A failure or refusal of a licensee to comply with a court*
23 *order, issued in the enforcement of a subpoena, mandating the*
24 *release of records to the healing arts board constitutes*
25 *unprofessional conduct and is grounds for suspension or revocation*
26 *of his or her license.*

27 *(e) Imposition of the civil penalties authorized by this section*
28 *shall be in accordance with the Administrative Procedure Act*
29 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
30 *2 of the Government Code). Any civil penalties paid to, or received*
31 *by, the board pursuant to this section shall be deposited into the*
32 *fund administered by the board.*

33 *(f) For purposes of this section, “certified medical records”*
34 *means a copy of the patient’s medical records authenticated by*
35 *the licensee or health care facility, as appropriate, on a form*
36 *prescribed by the licensee’s board.*

37 *(g) For purposes of this section, a “health care facility” means*
38 *a clinic or health facility licensed or exempt from licensure*
39 *pursuant to Division 2 (commencing with Section 1200) of the*
40 *Health and Safety Code.*

1 (h) If a board complies with Section 1684.1, 2225.5, or 2969,
2 that board shall not be subject to the requirements of this section.

3 (i) This section shall not apply to a licensee who does not have
4 access to, or control over, certified medical records or other types
5 of documents that belong to or are controlled by a health facility
6 or clinic.

7 SEC. 185. Section 4990.51 is added to the Business and
8 Professions Code, to read:

9 4990.51. (a) Notwithstanding any other provision of law, any
10 employer of a licensee shall report to the board the suspension or
11 termination for cause, or any resignation in lieu of suspension or
12 termination for cause, of any licensee in its employ within 15
13 business days. The report shall not be made until after the
14 conclusion of the review process specified in Section 52.3 of Title
15 2 of the California Code of Regulations and *Skelly v. State*
16 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
17 required reporting shall not constitute a waiver of confidentiality
18 of medical records. The information reported or disclosed shall
19 be kept confidential except as provided in subdivision (c) of Section
20 800 and shall not be subject to discovery in civil cases.

21 (b) The information to be reported by the employer shall include
22 the name and license number of the licensee involved, a
23 description of the facts and circumstances of the suspension or
24 termination for cause, any resignation in lieu of suspension or
25 termination for cause, and any other relevant information deemed
26 appropriate by the employer.

27 (c) The board shall be entitled to inspect and copy the following
28 documents in the record for any suspension or termination for
29 cause, or any resignation in lieu of suspension or termination for
30 cause, resulting in action that is required to be reported pursuant
31 to this section:

32 (1) Any statement for suspension or termination of the licensee.

33 (2) Any document or exhibits relevant to the suspension or
34 termination.

35 (d) If, during the investigation by the board of the cause for the
36 termination or suspension or resignation of the licensee, it is found
37 that there has been a violation of existing state or federal law, the
38 board shall report the violation to the appropriate agency.

39 (e) For purposes of this section, “suspension or termination for
40 cause” or “resignation in lieu of suspension or termination for

1 *cause” is defined as resignation, suspension, or termination from*
2 *employment for any of the following reasons:*

3 *(1) Use of controlled substances or alcohol to the extent that it*
4 *impairs the licensee’s ability to safely practice.*

5 *(2) Unlawful sale of a controlled substance or other prescription*
6 *items.*

7 *(3) Patient or client abuse, neglect, physical harm, or sexual*
8 *contact with a patient or client.*

9 *(4) Gross negligence or incompetence.*

10 *(5) Theft from a patient or client, any other employee, or the*
11 *employer.*

12 *(f) As used in this section, the following definitions apply:*

13 *(1) “Gross negligence” means a substantial departure from the*
14 *standard of care, which, under similar circumstances, would have*
15 *ordinarily been exercised by a competent licensee, and which has*
16 *or could have resulted in harm to the consumer. An exercise of so*
17 *slight a degree of care as to justify the belief that there was a*
18 *conscious disregard or indifference for the health, safety, or*
19 *welfare of the consumer shall be considered a substantial departure*
20 *from the standard of care.*

21 *(2) “Incompetence” means the lack of possession of, and the*
22 *failure to exercise that degree of learning, skill, care, and*
23 *experience ordinarily possessed by, a responsible licensee.*

24 *(3) “Willful” means a knowing and intentional violation of a*
25 *known legal duty.*

26 *(g) (1) Willful failure of an employer to make a report required*
27 *by this section is punishable by an administrative fine not to exceed*
28 *one hundred thousand dollars (\$100,000) per violation.*

29 *(2) Any failure of an employer, other than willful failure, to*
30 *make a report required by this section is punishable by an*
31 *administrative fine not to exceed fifty thousand dollars (\$50,000).*

32 *(h) The board shall investigate the circumstances underlying*
33 *any report received pursuant to this section within 30 days to*
34 *determine if an interim suspension order or temporary restraining*
35 *order should be issued. The board shall otherwise provide timely*
36 *disposition of the reports received pursuant to this section.*

37 *(i) The board shall send to the licentiate a copy of the report*
38 *along with the reasons for the filing of the report and notice*
39 *advising the licentiate of his or her right to submit additional*
40 *statements or other information to the board.*

1 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
2 incur any civil penalty as a result of making any report required
3 by this article.

4 (k) No report is required under this section where a report of
5 the action taken is already required under Section 805.

6 SEC. 186. Section 4990.52 is added to the Business and
7 Professions Code, to read:

8 4990.52. Unless otherwise provided, on or after July 1, 2013,
9 the board shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the board licenses:

13 (a) With regard to the status of every license, whether or not
14 the licensee or former licensee is in good standing, subject to a
15 temporary restraining order, subject to an interim suspension
16 order, subject to a restriction or cease practice ordered pursuant
17 to Section 23 of the Penal Code, or subject to any of the
18 enforcement actions described in Section 803.1.

19 (b) With regard to prior discipline of a licensee, whether or not
20 the licensee or former licensee has been subject to discipline by
21 the board or by the board of another state or jurisdiction, as
22 described in Section 803.1.

23 (c) Any felony conviction of a licensee reported to the board.

24 (d) All current accusations filed by the Attorney General,
25 including those accusations that are on appeal. For purposes of
26 this paragraph, "current accusation" means an accusation that
27 has not been dismissed, withdrawn, or settled, and has not been
28 finally decided upon by an administrative law judge and the board
29 unless an appeal of that decision is pending.

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the board.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 4990.50 or 805.

36 (g) Any misdemeanor conviction of a licensee that results in a
37 disciplinary action or an accusation that is not subsequently
38 withdrawn or dismissed.

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 *what types of information are not disclosed. These disclaimers*
2 *and statements shall be developed by the board and shall be*
3 *adopted by regulation.*

4 *(i) The information provided on the Internet shall be in*
5 *accordance with the California Public Records Act (Chapter 3.5*
6 *(commencing with Section 6250) of Division 7 of Title 1 of the*
7 *Government Code) and the Information Practices Act of 1977*
8 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
9 *of Division 3 of the Civil Code) and shall comply with the*
10 *Department of Consumer Affairs Guidelines for Access to Public*
11 *Records.*

12 *(j) Information provided on the Internet may not include*
13 *personal information, unless otherwise provided pursuant to this*
14 *chapter, including the home telephone number, date of birth, or*
15 *social security number. The information may not include the*
16 *licensee's address, but may include the city and county of the*
17 *licensee's address of record.*

18 *SEC. 187. Section 4990.53 is added to the Business and*
19 *Professions Code, to read:*

20 *4990.53. (a) Unless otherwise provided, if a licensee possesses*
21 *a license or is otherwise authorized to practice in any state other*
22 *than California or by any agency of the federal government and*
23 *that license or authority is suspended or revoked outright, the*
24 *California license of the licensee shall be suspended automatically*
25 *for the duration of the suspension or revocation, unless terminated*
26 *or rescinded as provided in subdivision (c). The board shall notify*
27 *the licensee of the license suspension and of his or her right to*
28 *have the issue of penalty heard as provided in this section.*

29 *(b) Upon its own motion or for good cause shown, the board*
30 *may decline to impose or may set aside the suspension when it*
31 *appears to be in the interest of justice to do so, with due regard*
32 *to maintaining the integrity of, and confidence in, the specific*
33 *healing art.*

34 *(c) The issue of penalty shall be heard by an administrative law*
35 *judge sitting alone or with a panel of the board, in the discretion*
36 *of the board. A licensee may request a hearing on the penalty and*
37 *that hearing shall be held within 90 days from the date of the*
38 *request. If the order suspending or revoking the license or authority*
39 *to practice is overturned on appeal, any discipline ordered*
40 *pursuant to this section shall automatically cease. Upon a showing*

1 to the administrative law judge or panel by the licensee that the
2 out-of-state action is not a basis for discipline in California, the
3 suspension shall be rescinded. If an accusation for permanent
4 discipline is not filed within 90 days of the suspension imposed
5 pursuant to this section, the suspension shall automatically
6 terminate.

7 (d) The record of the proceedings that resulted in the suspension
8 or revocation of the licensee's out-of-state license or authority to
9 practice, including a transcript of the testimony therein, may be
10 received in evidence.

11 (e) This section shall not apply to a licensee who maintains his
12 or her primary practice in California, as evidenced by having
13 maintained a practice in this state for not less than one year
14 immediately preceding the date of suspension or revocation.
15 Nothing in this section shall preclude a licensee's license from
16 being suspended pursuant to any other provision of law.

17 (f) This section shall not apply to a licensee whose license has
18 been surrendered, whose only discipline is a medical staff
19 disciplinary action at a federal hospital and not for medical
20 disciplinary cause or reason as that term is defined in Section 805,
21 or whose revocation or suspension has been stayed, even if the
22 licensee remains subject to terms of probation or other discipline.

23 (g) This section shall not apply to a suspension or revocation
24 imposed by a state that is based solely on the prior discipline of
25 the licensee by another state.

26 (h) The other provisions of this article setting forth a procedure
27 for the suspension or revocation of a licensee's license or
28 certificate shall not apply to summary suspensions issued pursuant
29 to this section. If a summary suspension has been issued pursuant
30 to this section, the licensee may request that the hearing on the
31 penalty conducted pursuant to subdivision (c) be held at the same
32 time as a hearing on the accusation.

33 (i) A board that complies with Section 2310 shall not be subject
34 to the requirements of this section.

35 SEC. 188. Section 4992.33 of the Business and Professions
36 Code is amended to read:

37 4992.33. (a) The board shall revoke any license issued under
38 this chapter upon a decision made in accordance with the
39 procedures set forth in Chapter 5 (commencing with Section 11500)
40 of Part 1 of Division 3 of Title 2 of the Government Code, that

contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 189. *Section 12529.8 is added to the Government Code, to read:*

12529.8. (a) Any healing arts board described in Division 2 (commencing with Section 500) of the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall assign attorneys to work on location

1 at the licensing unit of the Division of Investigation of the
2 Department of Consumer Affairs.

3 (b) The report requirements contained in Section 12529.7 shall
4 apply to any healing arts board that utilizes those provisions for
5 enforcement.

6 (c) This section shall not apply to any healing arts board listed
7 in subdivision (a) of Section 12529.

8 SEC. 190. (a) It is the intent of the Legislature that the
9 Department of Consumer Affairs shall, on or before December
10 31, 2012, establish an enterprise information technology system
11 necessary to electronically create and update healing arts license
12 information, track enforcement cases, and allocate enforcement
13 efforts pertaining to healing arts licensees. The Legislature intends
14 the system to be designed as an integrated system to support all
15 business automation requirements of the department's licensing
16 and enforcement functions.

17 (b) The Legislature also intends the department to enter into
18 contracts for telecommunication, programming, data analysis,
19 data processing, and other services necessary to develop, operate,
20 and maintain the enterprise information technology system.

21 SEC. 191. No reimbursement is required by this act pursuant
22 to Section 6 of Article XIII B of the California Constitution for
23 certain costs that may be incurred by a local agency or school
24 district because, in that regard, this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 However, if the Commission on State Mandates determines that
31 this act contains other costs mandated by the state, reimbursement
32 to local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.

35 SECTION 1. ~~Section 1623 is added to the Business and~~
36 ~~Professions Code, to read:~~

37 ~~1623. (a) Notwithstanding any other provision of law, the~~
38 ~~board may contract with a collection agency for the purpose of~~
39 ~~collecting outstanding fees, fines, or cost recovery amounts from~~
40 ~~any person who owes that money to the board, and, for those~~

1 ~~purposes, may provide to the collection agency the personal~~
2 ~~information of that person, including his or her birth date, telephone~~
3 ~~number, and social security number. The contractual agreement~~
4 ~~shall provide that the collection agency may use or release personal~~
5 ~~information only as authorized by the contract, and shall provide~~
6 ~~safeguards to ensure that the personal information is protected~~
7 ~~from unauthorized disclosure. The contractual agreement shall~~
8 ~~hold the collection agency liable for the unauthorized use or~~
9 ~~disclosure of personal information received or collected under this~~
10 ~~section.~~

11 ~~(b) The board shall not use a collection agency to recover~~
12 ~~outstanding fees, fines, or cost recovery amounts until the person~~
13 ~~has exhausted all appeals and the decision is final.~~

O

CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS



BILL NUMBER: SB 544

VERSION: As Amended April 14, 2011

AUTHOR: Price

SPONSOR: Author

COMMITTEE RECOMMENDED POSITION: None

SUBJECT: Healing Arts

Affected Sections: An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.

Current Status: Senate Business, Professions and Economic Development Committee
Hearing Scheduled for May 2, 2011

EXISTING LAW:

1. Authorizes the director of the DCA to audit complaint and disciplinary records of the Medical Board, allied health professional boards and the California Board of Podiatric Medicine.
2. Require a physician or surgeon, osteopathic physician or surgeon and doctor of podiatric medicine to report to indictments or information charging a felony against the licensee, convictions against the license of any felony or misdemeanor, as specified.
3. Require the district attorney, city attorney or other prosecuting agency to notify specified boards, that charges have been filed, or filings against a licensee as specified.
4. Requires the clerk of a court to notify specified boards of actions and filings against licensees.

THIS BILL WOULD:

Make the following changes to general Business and Professions Code sections:

1. Make findings and declarations including the excessive amount of time it takes a healing arts board to investigate and prosecute licensed professionals and state it is the intent of the legislature to make changes to improve efficiency and increase accountability of DCA as well as provide healing arts boards the regulatory tools to reduce the average timeframe to between 12 and 18 months.
2. Require a state agency, upon request by a board, to provide records about a licensee that are in the custody of that state agency. In addition would require a state agency to notify the board if it is investigating a licensee of that board.
3. Specify that law enforcement, government agencies, health care facilities and employers shall provide records to the board, upon request, prior to receiving payment from the board.
4. Prohibit a licensee from including any of the following provisions into a settlement with a consumer:
 - Prohibition to contacting or cooperating with the board
 - Prohibition to filing a complaint with the board
 - Require withdrawal of a complaint already filedAnd would specify that a violation would constitute unprofessional conduct.
5. Authorize a designee of the director to audit complaint and disciplinary records of any healing arts board.
6. Authorize the board to contract with the Department of Justice for investigative services.
7. Require the board to annually report to the department and legislature the following information until October 1, 2016:
 - Total complaints closed or resolved without discipline
 - Total complaints referred for formal investigation
 - Total number of accusations file and final disposition of accusations
 - Total number of citations, letters of reprimand, letters of admonishment issued
 - Total number of final licensee disciplinary actions taken

- Total number of cases in process for more than six months, 12 months, 18 months and 24 months, from receipt of the board
 - Average complaint processing time
 - Total number of licensees in diversion or on probation for alcohol or drug abuse, the number that successfully complete and the number that fail to do so
 - Total number of petitions for reinstatement
8. Specify that the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or a conviction of a felony requiring Penal Code Section 290 registration, shall be considered a crime substantially related to the duties of a licensee.
 9. Specify that a conviction for violation of a statute or regulation regarding dangerous drugs or controlled substances constitutes unprofessional conduct and authorize discipline irrespective of a subsequent order allowing the person to withdraw a guilty plea or setting aside the verdict of guilty.
 10. Specify that a violation of any state or federal law regulating dangerous drugs or controlled substances constitutes unprofessional conduct.
 11. Specify that the use or prescribing for self-administration any controlled substance or dangerous drug or use of alcohol to the extent it can be dangerous to the licensee or the public or to the extent that it impairs the ability of the licensee to practice safely, constitutes unprofessional conduct. Further this provision establishes that a such conviction also constitutes unprofessional conduct and establishes penalties.
 12. Establish the following as unprofessional conduct:
 - Failure to timely furnish information to the board as requested
 - Failure to cooperate and participate in any investigation or other proceeding pending against the licensee, as specified.
 13. Require a licensee to report to the board of any of the following:
 - Bringing of an indictment or information charging a felony against a licensee
 - Conviction of the licensee, including any verdict of guilty, plea of guilty or no contest to any felony or misdemeanor
 - Disciplinary action taken by another licensing entity or authority of this state or another state or federal agency.
 14. Require the clerk of a court to report to the board the commission of crime or any death or person injury resulting in a judgment for an amount in excess of \$30,000, resulting from negligence, error or omission in practice or rendering unauthorized professional services.
 15. Require the clerk of a court to report any filings against a licensee charging a felony, immediately upon obtaining information that the defendant is a licensee.
 16. Require the clerk of a court to transmit any felony preliminary hearing transcripts as specified.
 17. Require the Department of Justice to provide subsequent reports within 30 days.
 18. Require the Office of the Attorney General to prepare an accusation within 60 calendar days of receipt from the board; prepare default decisions within five days and set a

hearing date within three days of receiving a notice of defense unless otherwise instructed by the board.

19. Authorize the board to issue a limited or restricted license.
20. Require the board to query the National Practitioner Data Bank as follows:
 - Prior to granting a license to an applicant that currently resides in another state
 - Prior to granting a license to an application that is currently or has ever been licensed as a health care practitioner
 - Prior to granting a petition or reinstatementAuthorize the board to charge a fee to cover the costs to conduct the queries.
21. Establish that unlicensed practice is public offense, punishable by a fine of up to \$100,000.
22. Authorize the board to utilize the vertical enforcement model employed by the Medical Board of California, including using the services of the Department of Justice Health Quality Enforcement Section or licensing section.
23. State legislative intent that the department, on or before December 31, 2012, establish a new computer system to support all business automation requirements for the department's licensing and enforcement functions.

Make the following changes to Board of Pharmacy Statute:

1. Authorize the board to delegate to the executive officer the authority to adopt default decisions and stipulated settlements when the licensee has agreed to revocation or surrender of his or her license. The executive officer would be required to report such actions to the board during scheduled board meetings.
2. Authorize the board to enter into a settlement with a licensee in lieu of a pleading, if the settlement contains language identifying the factual basis for the action being taken and the respondent is not precluded from filing a petition as allowed. The executive officer would be required to report such actions to the board during scheduled board meetings.
3. Specify that a licensee is automatically suspended during any time that a licensee is incarcerated after a felony conviction and establish the process that must be followed.
4. Require any proposed decision that contained any finding of fact that the licensee engaged in any act of sexual contact with a patient as defined, or any finding that the licensee has committed a sex offense, shall contain a order revoking the licensee.

Defines sex offense as any of the following:

 - Offense that requires registration pursuant to Section 290 of the Penal code
 - Any offense described in Section 243.4(a)-(d), 261.5, 313.1 or 647(a) or (d) of the Penal Code
 - Any attempt to commit any of the specified offenses
 - Any similar offense committed or attempted in another state.
5. Require the board to deny an application by an individual required to register under Penal Code section 290 as specified. Exempt such action against a person that has been relieved of his or her duty to register.
6. Beginning on or after July 1, 2012 require posting of the following information:

- Licensee status, including any suspension or enforcement actions
- Licensee disciplinary history including discipline taken by another board or jurisdiction
- Reported felony convictions
- Current accusations filed by the AG's Office
- Reported malpractice judgment or arbitration award imposed against a licensee
- Hospital disciplinary action imposed against a licensee that resulted in termination or revocation of hospital staff privileges as specified
- Misdemeanor convictions that result in disciplinary action
- Appropriate disclaimers that shall be adopted by regulation

Specify that information provided on the internet cannot include the home phone number, date of birth, social security number or licensee's address.

7. Allow for the automatic suspension of a license issued by the board, if the licensee possesses a license in another state or federal government that is suspended or outright revoked and establishes the process.
8. State the intent of the legislature to request that the Bureau of State Audits conduct a performance audit of the Pharmacists Recovery Program and require the board to pay for the audit.

AUTHOR'S INTENT:

This measure will ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state.

COMMENTS:

Beginning in July 2009 the Department of Consumer Affairs has been working with health care boards to improve their capabilities to investigate and discipline errant licensees to protect the public from harm. These results yielded the Consumer Protection Enforcement Initiative (CPEI). The CPEI was comprised of a three pronged solution designed to ensure that: (1) investigations were completed and final action taken against a licensee within 12 – 18 months, (2) legislative changes designed to remove barriers to investigations, and (3) a new computer system be installed that would meet the boards' needs to collect information and monitor performance, and additional staff resources.

Many of the legislative changes identified by the department were incorporated in SB 1111 (Negrete McLeod). SB 1111 failed passage in its first policy committee and subsequent to that, the department identified portions of the legislation that could be implemented in regulation. Since that time the board has been considering regulation changes. Below is a summary of the changes that the board voted to pursue. The formal rulemaking process has not been initiated.

1. Amendments to section 1760 regarding standardized disciplinary guidelines for violations dealing with sexual contact. As drafted, the change would provide that findings of sexual contact with a patient, client or customer or conviction of a sex offense would be grounds for revocation by the Administrative Law Judge (ALJ); however, the board would have discretion to impose a lesser penalty under this proposal. **Board Action:** The board rejected this proposal.
2. Amendments to section 1762 regarding the proposed amendments to this section that would specify that certain acts would constitute unprofessional conduct including: gag clauses in a civil suit settlement; failure to provide information as requested by the board; failure to comply with a court order or subpoena for records; and failure to notify the board about an arrest, indictment, conviction or discipline as specified. The section also would specify that the board is authorized to revoke a license or deny an application for an act requiring an individual to register as a sex offender.
Board Action: The board voted to direct staff to modify amendments to section 1762 to specify records within the board's purview and to bring revisions back to the Enforcement Committee for possible recommendation to the board.
3. Amendment to section 1769 – Application Review and Criteria for Rehabilitation. The proposed amendment would allow the board to request that an applicant for licensure undergo an examination as specified to determine if the applicant is safe to practice. The board voted to require that once it has been determined that an applicant is to be evaluated; the evaluation shall be completed within 60 days. Within 60 days of the evaluation, the report must be received from the evaluator.
Board Action: The board voted to amend the proposed language for section 1769 to require that once it has been determined that an applicant is to be evaluated, the evaluation and report shall be completed within 60 days and directed staff to take all necessary steps to initiate the formal rulemaking process.
4. Add Section 1762 – Unprofessional Conduct. This proposed change would specify the following as unprofessional conduct:
 - Use of a gag clauses in a civil suit settlement
 - Failure without lawful excuse to provide information as requested by the board within 15 days of the receipt of the request
 - Failure to comply with a court order or subpoena for records
 - Failure to notify the board about an arrest, indictment, conviction or disciplineWould specify that the board is authorized to revoke a license or deny an application for an act requiring an individual to register as a sex offender
Board Action: The board voted to initiate a rulemaking to adopt the proposed text.

In addition to the above, the board also voted and regulation changes are currently being sought to require a pharmacist applicant, intern pharmacist applicant and pharmacy technician applicant to provide a self-query from the National Practitioner Data Bank as part of the application requirements.

Further, some of the provisions included in this measure would create either duplication or conflict with our code. At the request of the committee, board staff will be preparing a comparison chart detailing

the cross-over. Although committee staff did indicate a willingness to review this information, it is unclear if identified provisions will be amended out.

PREVIOUS/RELATED LEGISLATION:

Previous

SB 1111 (Negrete McLeod, 2010) contained similar provisions but died in its first policy committee. The board did not have a position on this bill.

FISCAL/ECONOMIC IMPACT:

The board will most likely experience an increase in the number of investigations initiated based on these additional reporting requirements. If the board is able to fill all of its authorized position, this increase in workload could be absorbed within existing resources.

The board will require funding for a part-time analyst to ensure the board meetings the web site posting requirements and reporting requirements. These costs would include about \$28,000 as a mid year augmentation for 11/12 with ongoing costs of \$43,000.

The board will also require onetime funding to cover the costs associated with the audit to be conducted by the Bureau of State Audits. Staff is awaiting the estimated costs and will share this information with the board when it is available.

SUPPORT/OPPOSITION:

Unknown

HISTORY:

Date	Action
Apr. 21	Set for hearing May 2.
Apr. 20	Hearing postponed by committee.
Apr. 14	From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 8	Set for hearing April 25.
Mar. 24	Re-referred to Coms. on B., P. & E.D. and JUD.
Mar. 21	From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.
Mar. 3	Referred to Com. on RLS.
Feb. 18	From printer. May be acted upon on or after March 20.
Feb. 17	Introduced. Read first time. To Com. on RLS. for assignment. To print.

Introduced by Senator ~~Wyland~~ Runner

February 18, 2011

An act to amend Section ~~500~~ 3640 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 667, as amended, ~~Wyland~~ Runner. ~~Healing arts. Naturopathic doctor.~~

Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee in the Osteopathic Medical Board of California. Existing law sets forth the scope of practice of naturopathic doctors. Existing law authorizes a naturopathic doctor to furnish and order drugs under standardized procedures and protocols developed by the naturopathic doctor and his or her supervising physician and surgeon, as specified. Existing law provides that the authority to use all routes for furnishing prescription drugs shall be consistent with other specified oversight and supervision requirements.

This bill would delete that provision and would instead provide that nothing in the act prohibits a naturopathic doctor from ordering, prescribing, or administering a nonprescription substance that becomes a substance requiring a prescription based solely on its route of administration.

~~Under existing law, if the register or book of registration of the Medical Board of California, the Dental Board of California, or the California State Board of Pharmacy is destroyed, as specified, the board may reproduce it.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3640 of the Business and Professions
2 Code is amended to read:
3 3640. (a) A naturopathic doctor may order and perform
4 physical and laboratory examinations for diagnostic purposes,
5 including, but not limited to, phlebotomy, clinical laboratory tests,
6 speculum examinations, orificial examinations, and physiological
7 function tests.
8 (b) A naturopathic doctor may order diagnostic imaging studies,
9 including X-ray, ultrasound, mammogram, bone densitometry,
10 and others, consistent with naturopathic training as determined by
11 the committee, but shall refer the studies to an appropriately
12 licensed health care professional to conduct the study and interpret
13 the results.
14 (c) A naturopathic doctor may dispense, administer, order, and
15 prescribe or perform the following:
16 (1) Food, extracts of food, nutraceuticals, vitamins, amino acids,
17 minerals, enzymes, botanicals and their extracts, botanical
18 medicines, homeopathic medicines, all dietary supplements and
19 nonprescription drugs as defined by the federal Food, Drug, and
20 Cosmetic Act, consistent with the routes of administration
21 identified in subdivision (d).
22 (2) Hot or cold hydrotherapy; naturopathic physical medicine
23 inclusive of the manual use of massage, stretching, resistance, or
24 joint play examination but exclusive of small amplitude movement
25 at or beyond the end range of normal joint motion; electromagnetic
26 energy; colon hydrotherapy; and therapeutic exercise.
27 (3) Devices, including, but not limited to, therapeutic devices,
28 barrier contraception, and durable medical equipment.
29 (4) Health education and health counseling.
30 (5) Repair and care incidental to superficial lacerations and
31 abrasions, except suturing.
32 (6) Removal of foreign bodies located in the superficial tissues.

1 (d) A naturopathic doctor may utilize routes of administration
2 that include oral, nasal, auricular, ocular, rectal, vaginal,
3 transdermal, intradermal, subcutaneous, intravenous, and
4 intramuscular.

5 (e) The committee may establish regulations regarding ocular
6 or intravenous routes of administration that are consistent with the
7 education and training of a naturopathic doctor.

8 (f) Nothing in this section shall exempt a naturopathic doctor
9 from meeting applicable licensure requirements for the performance
10 of clinical laboratory tests.

11 (g) ~~The authority to use all routes for furnishing prescription~~
12 ~~drugs as described in Section 3640.5 shall be consistent with the~~
13 ~~oversight and supervision requirements of Section 2836.1~~ *Nothing*
14 *in this chapter shall prohibit a naturopathic doctor from ordering,*
15 *prescribing, or administering a nonprescription substance that*
16 *becomes a substance requiring a prescription based solely on its*
17 *route of administration.*

18 ~~SECTION 1. Section 500 of the Business and Professions Code~~
19 ~~is amended to read:~~

20 ~~500. Whenever the register or book of registration of the~~
21 ~~Medical Board of California, the Dental Board of California, or~~
22 ~~the California State Board of Pharmacy is destroyed by fire or~~
23 ~~other public calamity, the board, whose duty it is to keep the~~
24 ~~register or book, may reproduce it so that there may be shown as~~
25 ~~nearly as possible the record existing in the original at the time of~~
26 ~~destruction.~~

Attachment 6

AMENDED IN ASSEMBLY MARCH 30, 2011

AMENDED IN ASSEMBLY MARCH 15, 2011

AMENDED IN ASSEMBLY MARCH 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 389

Introduced by Assembly Member Mitchell
(Principal coauthor: Senator Pavley)

February 14, 2011

~~An act to amend Section 2191 of the Business and Professions Code;~~
~~and~~ *An act to add Article 5 (commencing with Section 125286.10) to*
Chapter 2 of Part 5 of Division 106 of the Health and Safety Code,
relating to genetic diseases.

LEGISLATIVE COUNSEL'S DIGEST

AB 389, as amended, Mitchell. Bleeding disorders.

Existing law, the Holden-Moscone-Garamendi Genetically Handicapped Person's Program, requires the Director of Health Care Services to establish and administer a program for the medical care of persons with genetically handicapping conditions, including hemophilia.

This bill would impose specified requirements on providers of blood clotting products for home use, as described, whose products are used for the treatment and prevention of symptoms associated with bleeding disorders, including all forms of hemophilia. This bill would require the California State Board of Pharmacy to administer and enforce these provisions.

~~Existing law requires the Division of Licensing of the Medical Board of California to establish continuing education requirements for physicians and surgeons.~~

This bill would require the division to consider including a course on bleeding disorders, as specified, in determining its continuing education requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2191 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~2191. (a) In determining its continuing education requirements,~~
4 ~~the Division of Licensing shall consider including a course in~~
5 ~~human sexuality as defined in Section 2090 and nutrition to be~~
6 ~~taken by those licensees whose practices may require knowledge~~
7 ~~in those areas.~~
8 ~~(b) The division shall consider including a course in child abuse~~
9 ~~detection and treatment to be taken by those licensees whose~~
10 ~~practices are of a nature that there is a likelihood of contact with~~
11 ~~abused or neglected children.~~
12 ~~(c) The division shall consider including a course in acupuncture~~
13 ~~to be taken by those licensees whose practices may require~~
14 ~~knowledge in the area of acupuncture and whose education has~~
15 ~~not included instruction in acupuncture.~~
16 ~~(d) The division shall encourage every physician and surgeon~~
17 ~~to take nutrition as part of his or her continuing education,~~
18 ~~particularly a physician and surgeon involved in primary care.~~
19 ~~(e) The division shall consider including a course in elder abuse~~
20 ~~detection and treatment to be taken by those licensees whose~~
21 ~~practices are of a nature that there is a likelihood of contact with~~
22 ~~abused or neglected persons 65 years of age and older.~~
23 ~~(f) In determining its continuing education requirements, the~~
24 ~~division shall consider including a course in the early detection~~
25 ~~and treatment of substance abusing pregnant women to be taken~~
26 ~~by those licensees whose practices are of a nature that there is a~~
27 ~~likelihood of contact with these women.~~
28 ~~(g) In determining its continuing education requirements, the~~
29 ~~division shall consider including a course in the special care needs~~
30 ~~of drug addicted infants to be taken by those licensees whose~~
31 ~~practices are of a nature that there is a likelihood of contact with~~
32 ~~these infants.~~

1 ~~(h) In determining its continuing education requirements, the~~
2 ~~division shall consider including a course providing training and~~
3 ~~guidelines on how to routinely screen for signs exhibited by abused~~
4 ~~women, particularly for physicians and surgeons in emergency,~~
5 ~~surgical, primary care, pediatric, prenatal, and mental health~~
6 ~~settings. In the event the division establishes a requirement for~~
7 ~~continuing education coursework in spousal or partner abuse~~
8 ~~detection or treatment, that requirement shall be met by each~~
9 ~~licensee within no more than four years from the date the~~
10 ~~requirement is imposed.~~

11 ~~(i) In determining its continuing education requirements, the~~
12 ~~division shall consider including a course in the special care needs~~
13 ~~of individuals and their families facing end-of-life issues, including,~~
14 ~~but not limited to, all of the following:~~

15 ~~(1) Pain and symptom management.~~

16 ~~(2) The psychosocial dynamics of death.~~

17 ~~(3) Dying and bereavement.~~

18 ~~(4) Hospice care.~~

19 ~~(j) In determining its continuation education requirements, the~~
20 ~~division shall give its highest priority to considering a course on~~
21 ~~pain management.~~

22 ~~(k) In determining its continuing education requirements, the~~
23 ~~division shall consider including a course on bleeding disorders,~~
24 ~~with particular emphasis on von Willebrand disease using the latest~~
25 ~~treatment guidelines adopted by the National Heart, Lung, and~~
26 ~~Blood Institute.~~

27 ~~SEC. 2.~~

28 *SECTION 1.* Article 5 (commencing with Section 125286.10)
29 is added to Chapter 2 of Part 5 of Division 106 of the Health and
30 Safety Code, to read:

31
32 Article 5. Standards of Service for Providers of Blood Clotting
33 Products for Home Use Act
34

35 125286.10. This article shall be known, and may be cited, as
36 the Standards of Service for Providers of Blood Clotting Products
37 for Home Use Act.

38 125286.15. The Legislature hereby finds and declares all of
39 the following:

1 (a) Hemophilia is a rare, hereditary, bleeding disorder affecting
2 at least 4,000 persons in California and is a chronic, lifelong, and
3 incurable, but treatable, disease.

4 (b) Von Willebrand disease is a human bleeding disorder caused
5 by a hereditary deficiency or abnormality of the von Willebrand
6 factor in human blood, which is a protein that helps clot blood.
7 Von Willebrand disease is a chronic, lifelong, incurable, but
8 treatable, disease affecting at least 360,000 Californians.

9 (c) Until the 1970s, people with severe hemophilia suffered
10 from uncontrollable internal bleeding, crippling orthopedic
11 deformities, and a shortened lifespan. More recently, the production
12 of highly purified blood clotting factors has provided people with
13 hemophilia and other bleeding disorders the opportunity to lead
14 normal lives, free of pain and crippling arthritis.

15 (d) The preferred method of treatment of hemophilia today is
16 intravenous injection, or infusion, of prescription blood clotting
17 products several times per week, along with case management and
18 specialized medical care at a federally designated regional
19 hemophilia treatment center.

20 (e) Pharmacies and other entities specializing in the delivery of
21 blood clotting products and related equipment, supplies, and
22 services for home use form a growing enterprise in California.

23 (f) Timely access to federally designated regional hemophilia
24 centers and appropriate products and services in the home,
25 including infusion of blood clotting products and related
26 equipment, and supplies and services for persons with hemophilia
27 and other bleeding disorders, reduces mortality and bleeding-related
28 hospitalizations according to the federal Centers for Disease
29 Control and Prevention and the Medical and Scientific Advisory
30 Council of the National Hemophilia Foundation.

31 (g) Eligible persons with hemophilia or other bleeding disorders
32 may receive treatment through the Genetically Handicapped
33 Persons Program, the California Children's Services Program, and
34 the Medi-Cal program.

35 (h) For the benefit of persons with hemophilia or other bleeding
36 disorders, the purposes of this article are to do the following:

37 (1) Establish standards of service for entities that deliver blood
38 clotting products and related equipment, supplies, and services for
39 home use.

1 (2) Promote access to a full range of essential, cost-effective,
2 lifesaving, blood clotting products and related equipment, supplies,
3 and high-quality services for home use for persons with hemophilia
4 and other bleeding disorders.

5 125286.20. Unless the context otherwise requires, the following
6 definitions shall apply for purposes of this article:

7 (a) “Assay” means the amount of a particular constituent of a
8 mixture or of the biological or pharmacological potency of a drug.

9 (b) “Ancillary infusion equipment and supplies” means the
10 equipment and supplies required to infuse a blood clotting product
11 into a human vein, including, but not limited to, syringes, needles,
12 sterile gauze, field pads, gloves, alcohol swabs, numbing creams,
13 tourniquets, medical tape, sharps or equivalent biohazard waste
14 containers, and cold compression packs.

15 (c) “Bleeding disorder” means a medical condition characterized
16 by a deficiency or absence of one or more essential blood clotting
17 proteins in the human blood, often called “factors,” including all
18 forms of hemophilia and other bleeding disorders that, without
19 treatment, result in uncontrollable bleeding or abnormal blood
20 clotting.

21 (d) “Blood clotting product” means an intravenously
22 administered medicine manufactured from human plasma or
23 recombinant biotechnology techniques, approved for distribution
24 by the federal Food and Drug Administration, that is used for the
25 treatment and prevention of symptoms associated with bleeding
26 disorders. Blood clotting products include, but are not limited to,
27 Factor VII, Factor VIIa, Factor VIII, and Factor IX products, von
28 Willebrand Factor products, bypass products for patients with
29 inhibitors, and activated prothrombin complex concentrates.

30 (e) “Emergency” means care as defined in Section 1317.1.

31 (f) “Hemophilia” means a human bleeding disorder caused by
32 a hereditary deficiency of the Factors I, II, V, VIII, IX, XI, XII,
33 or XIII blood clotting protein in human blood.

34 (g) “Hemophilia treatment center” means a facility for the
35 treatment of bleeding disorders, including, but not limited to,
36 hemophilia, that receives funding specifically for the treatment of
37 patients with bleeding disorders from federal government sources,
38 including, but not limited to, the federal Centers for Disease
39 Control and Prevention and the federal Health Resources and

1 Services Administration (HRSA) of the United States Department
2 of Health and Human Services.

3 (h) “Home nursing services” means specialized nursing care
4 provided in the home setting to assist a patient in the reconstitution
5 and administration of blood clotting products.

6 (i) “Home use” means infusion or other use of a blood clotting
7 product in a place other than a state-recognized hemophilia
8 treatment center or other clinical setting. Places where home use
9 occurs include, without limitation, a home or other nonclinical
10 setting.

11 (j) “Patient” means a person needing a blood clotting product
12 for home use.

13 (k) (1) “Provider of blood clotting products for home use”
14 means all the following pharmacies, except as described in Section
15 125286.35, that dispense blood clotting factors for home use:

16 (A) Hospital pharmacies.

17 (B) Health system pharmacies.

18 (C) Pharmacies affiliated with hemophilia treatment centers.

19 (D) Specialty home care pharmacies.

20 (E) Retail pharmacies.

21 (2) The providers described in this subdivision may also provide
22 home nursing services for persons with bleeding disorders.

23 (3) The providers described in this subdivision shall include a
24 health care service plan and all its affiliated providers if the health
25 care service plan exclusively contracts with a single medical group
26 in a specified geographic area to provide professional services to
27 its enrollees.

28 125286.25. Each provider of blood clotting products for home
29 use shall meet all of the following requirements:

30 (a) Have sufficient knowledge and understanding of bleeding
31 disorders to accurately follow the instructions of the prescribing
32 physician and ensure high-quality service for the patient and the
33 medical and psychosocial management thereof, including, but not
34 limited to, home therapy.

35 (b) Have access to a provider with sufficient clinical experience
36 providing services to persons with bleeding disorders that enables
37 the provider to know when patients have an appropriate supply of
38 clotting factor on hand and about proper storage and refrigeration
39 of clotting factors.

1 (c) Maintain 24-hour on-call service seven days a week for
2 every day of the year, adequately screen telephone calls for
3 emergencies, acknowledge all telephone calls within one hour or
4 less, and have access to knowledgeable pharmacy staffing on call
5 24 hours a day, to initiate emergency requests for clotting factors.

6 (d) Have the ability to obtain all brands of blood clotting
7 products approved by the federal Food and Drug Administration
8 in multiple assay ranges (low, medium, and high, as applicable)
9 and vial sizes, including products manufactured from human
10 plasma and those manufactured with recombinant biotechnology
11 techniques, provided manufacturer supply exists and payer
12 authorization is obtained.

13 (e) Supply all necessary ancillary infusion equipment and
14 supplies with each prescription, as needed.

15 (f) Store and ship, or otherwise deliver, all blood clotting
16 products in conformity with all state and federally mandated
17 standards, including, but not limited to, the standards set forth in
18 the product's approved package insert (PI).

19 (g) When home nursing services are necessary, as determined
20 by the treating physician, provide these services either directly or
21 through a qualified third party with experience in treating bleeding
22 disorders and coordinate pharmacy services with the third party
23 when one is used to provide home nursing services.

24 (h) Upon receiving approved authorization for a nonemergency
25 prescription, provided manufacturer supply exists, ship the
26 prescribed blood clotting products and ancillary infusion equipment
27 and supplies to the patient within two business days or less for
28 established and new patients.

29 (i) Upon receiving approved authorization to dispense a
30 prescription for an emergency situation, provided manufacturer
31 supply exists, deliver prescribed blood products, ancillary infusion
32 equipment and supplies, medications, and home nursing services
33 to the patient within 12 hours for patients living within 100 miles
34 of a major metropolitan airport, and within one day for patients
35 living more than 100 miles from a major metropolitan airport.

36 (j) Provide patients who have ordered their products with a
37 designated contact telephone number for reporting problems with
38 a delivery and respond to these calls within a reasonable time
39 period.

1 (k) Provide patients with notification of Class 1 and Class 2
2 recalls and withdrawals of blood clotting products and ancillary
3 infusion equipment within 24 hours of the provider of blood
4 clotting products for home use receiving notification and participate
5 in the National Patient Notification System for blood clotting
6 product recalls.

7 (l) Provide language interpretive services over the telephone or
8 in person, as needed by the patient.

9 (m) Have a detailed plan for meeting the requirements of this
10 article in the event of a natural or manmade disaster or other
11 disruption of normal business operations.

12 (n) Provide appropriate and necessary recordkeeping and
13 documentation as required by state and federal law and retain
14 copies of the patient's prescriptions.

15 (o) Comply with the privacy and confidentiality requirements
16 of the federal Health Insurance Portability and Accountability Act
17 of 1996 (HIPAA).

18 125286.30. The California State Board of Pharmacy shall
19 administer and enforce this article.

20 125286.35. Nothing in this article shall apply to either hospital
21 pharmacies or health system pharmacies that dispense blood
22 clotting products due only to emergency, urgent care, or inpatient
23 encounters, or if an inpatient is discharged with a supply of blood
24 clotting products for home use.

CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS



BILL NUMBER: AB 389

VERSION: As Amended March 30, 2011

AUTHOR: Mitchell

SPONSOR: Hemophilia Council of California

COMMITTEE RECOMMENDED POSITION: Watch

SUBJECT: Bleeding disorders:

Affected Sections: Amend Section 2191 of the Business and Professions Code and Add Article 5 (commencing with Section 125286.10) to Chapter 2 or Part 5 of Division 106 of the Health and Safety Code

Current Status: Assembly Third Reading file on April 27, 2011

EXISTING LAW:

1. Establishes the Holden-Moscone-Garamendi Genetically Handicapped Person's Program within the Department of Health Care Services. [HSC §125125]
2. Requires the Director of Health Care Services to establish and administer a program for the medical care of persons with genetically disabling conditions, including hemophilia. [HSC §125130]
3. Requires the Division of Licensing of the Medical Board of California to establish continuing education requirements for physicians and surgeons as specified and sets forth the criteria that the division shall use in considering courses. [B&PC §2191]

THIS BILL WOULD:

1. Require the division to consider including a course on bleeding disorders with particular emphasis on von Willebrand disease using the latest treatment guidelines adopted by the National Heart, Lung and Blood Institute.
2. Add Article 5. Standards of Service for Providers of Blood Clotting Products for Home Use Act that includes the following:
 - a. Findings and declarations about bleeding disorders, history of and treatment of such disorders, pharmacies role in the delivery of products, identification of persons eligible for treatment through various programs, and states that this article is necessary for the benefit of persons with bleeding disorders to establish standards of service and to promote cost effective, life saving products for home use.
 - b. Defines various terms for purposes of this article including:

- i. “home nursing services” means specialized nursing care provided in the home setting to assist a patient in the reconstitution and administration of blood clotting products.
 - ii. “provider of blood clotting products for home use” means hospital pharmacies, health systems pharmacies, pharmacies affiliated with treatment centers, specialty home care pharmacies and retail pharmacies. These providers are allowed to provide home nursing services and are required to include a health care service plan and all its affiliated providers if the plan exclusively contracts with a single medication group in a specified areas to provide professional services to enrollees.
- c. Requires that each provider, as defined above, meet the following requirements:
 - i. Have sufficient knowledge and understanding of bleeding disorders to accurately follow the instructions of the prescriber and ensure quality care.
 - ii. Have access to a provider with sufficient clinical experience providing services to persons with bleeding disorders that enables to the provider to know when patients have an appropriate supply of product on hand as well and understanding about proper storage and refrigeration.
 - iii. Maintain 24-hour on-call service seven days a week, 365 days a years.
 - iv. Have the ability to obtain all brands of the products approved by the FDA in multiple assay ranges as specified.
 - v. Supply all necessary ancillary infusion equipment and supplies as needed.
 - vi. Store, ship, or otherwise deliver, all products in conformity with state and federally mandated standards.
 - vii. Provide home nursing services either directly or via a third party, when determined necessary by the physician.
 - viii. Ship product within two business days to a patient for a nonemergency prescription.
 - ix. For emergencies, deliver products, equipment, medications and home nursing services within 12 hours, for patients living within 100 miles of a major metropolitan airport, or within one days for patients living outside that area.
 - x. Provide contact information to a patient to report problems with delivery.
 - xi. Provide patient with product recall and withdrawal notifications within 24 hours.
 - xii. Provide language interpretive service via phone or in person, as needed.
 - xiii. Have a detailed plan in the event of a natural or manmade disaster.
 - xiv. Provide appropriate record keeping.
 - xv. Comply with HIPAA requirements.
- d. Requires the California Board of Pharmacy to administer and enforce this article.

AUTHOR'S INTENT:

According to the author's office, "AB 389 will establish standards of service for pharmacies that deliver blood clotting products and related equipment, supplies, and services for home use and would promote access to a full range of essential, cost effective, life-saving, blood clotting products and related equipment, supplies for home use for people who have hemophilia, von Willebrand disease and other bleeding disorders."

COMMENTS:

Many of these provisions are currently the standard of practice, but are not mandated anywhere. This measure specifies that the Board of Pharmacy will enforce the provisions of this bill. The board could fulfill this mandate through routine inspections of pharmacies and others under the board's jurisdiction as well as investigation of consumer complaints received. The board would already have jurisdiction to investigate consumer complaints involving poor service or product delivery that resulted in either patient harm or the potential for harm. We are unaware of any such complaints received by the board.

There are potential challenges in enforcing some of these provisions. Specifically, the board may not be in a position to assess the clinical experience of the provider to ensure they have sufficient experience to know when patients have an appropriate supply of clotting factor on hand as required. Further, it is unclear if the board would have jurisdiction over the home nursing services and the quality of the care provided.

The previous version of this bill contained a provision requiring the Licensing Division of the Medical Board to consider requiring a continuing education course on bleeding disorders. This provision was amended out of the measure on March 30, 2011.

FISCAL/ECONOMIC IMPACT:

We anticipate a portion of an inspector PY will be necessary to ensure compliance with these provisions. This workload could possibly be absorbed if the board is able to fill all authorized inspector positions. However, because of the bill's specificity and the need for close monitoring of these provisions, the board would need to do frequent inspections. Because the specialty pharmacies are not required to have a separate license, nor are they required to notify the board that they provide such services, performing inspection on all pharmacies that provide these services would be a challenge.

PREVIOUS/RELATED LEGISLATION

SB 1594 (Steinberg, 2007) would have established standards for providers of blood clotting products. The board had a “Watch” position on the bill. The measure later died after being placed on the Senate Appropriations Suspense File and never passed out of the house of origin.

SB 971 (Pavely, 2010) introduced legislation similar to this proposal. The board did not have a position on this bill. This bill was vetoed by the governor.

“I am returning Senate Bill 971 without my signature. This bill is unnecessary and attempts to create additional standards that are already being adequately enforced through other regulatory and administrative mechanisms. Since the current standards of practice for blood clotting products and service are already being met through state and federal pharmacy laws, voluntary compliance and existing state contract provisions, it is unclear what problem this bill seeks to address. For these reasons, I am unable to sign this bill.”

SUPPORT/OPPOSITION:

Support

Hemophilia Council of California (sponsor)
California Society of Health-System Pharmacists
Community Healthcare Services
CSL Behring
Grifols, Inc.
Federal Hemophilia Treatment Centers Region IX
Herndon Pharmacy
National Cornerstone Healthcare Services Inc.
Red Chip Enterprises
Walgreens

Oppose

None on file as of March 22, 2011

HISTORY:

Apr. 14 Read second time. Ordered to third reading.
Apr. 13 From committee: Do pass. (Ayes 12. Noes 3.) (April 13).
Apr. 6 From committee: Do pass and re-refer to Com. on APPR. (Ayes 15. Noes 3.) (April 5). Re-referred to Com. on APPR.
Mar. 31 Re-referred to Com. on HEALTH.
Mar. 30 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Mar. 22 From committee: Do pass and re-refer to Com. on HEALTH. (Ayes 9. Noes 0.) (March 22). Re-referred to Com. on HEALTH.

Mar. 16 Re-referred to Com. on B., P. & C.P.
Mar. 15 From committee chair, with author's amendments: Amend, and re-refer
to Com. on B., P. & C.P. Read second time and amended.
Mar. 8 Re-referred to Com. on B., P. & C.P.
Mar. 7 From committee chair, with author's amendments: Amend, and re-refer
to Com. on B., P. & C.P. Read second time and amended.
Feb. 24 Referred to Com. on B., P. & C.P.
Feb. 15 From printer. May be heard in committee March 17.
Feb. 14 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 5, 2011
AMENDED IN ASSEMBLY MARCH 17, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 604

Introduced by Assembly Member Skinner
(Coauthor: Assembly Member Blumenfield)

February 16, 2011

An act to amend Sections 121349, 121349.1, 121349.2, and 121349.3 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 604, as amended, Skinner. Needle exchange programs.

Existing law, with certain exceptions, makes it a misdemeanor for a person to deliver, furnish, *or* transfer, *or* possess with intent to deliver, furnish, or transfer, ~~or manufacture with the intent to deliver, furnish, or transfer,~~ drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to ~~plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale,~~ *or otherwise* introduce into the human body a controlled substance. Existing law provides an exception to this general rule by authorizing a city, county, or city and county to conduct a clean needle and syringe exchange project authorized by the public entity to combat the spread of HIV and bloodborne hepatitis. Existing law exempts providers participating in an exchange project from criminal prosecution for possession of needles or syringes during participation in the project. Existing law also provides a specified annual comment and reporting process relating to the needle and syringe exchange projects.

This bill would authorize the State Department of Public Health to authorize, as specified, certain entities to provide hypodermic needle and syringe exchange services in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. *The bill would require the department to establish and maintain on its Internet Web site the address and contact information of these programs.*

This bill would exempt staff and volunteers participating in an authorized exchange project from criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes during participation in an exchange project and would exempt program participants from criminal prosecution for possession of needles and syringes acquired from an authorized exchange project entity. The bill would also make the comment and reporting process for the projects biennial.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 121349 of the Health and Safety Code
- 2 is amended to read:
- 3 121349. (a) The Legislature finds and declares that scientific
- 4 data from needle exchange programs in the United States and in
- 5 Europe have shown that the exchange of used hypodermic needles
- 6 and syringes for clean hypodermic needles and syringes does not
- 7 increase drug use in the population, can serve as an important
- 8 bridge to treatment and recovery from drug abuse, and can curtail
- 9 the spread of human immunodeficiency virus (HIV) infection
- 10 among the intravenous drug user population.
- 11 (b) In order to reduce the spread of HIV infection and
- 12 bloodborne hepatitis among the intravenous drug user population
- 13 within California, the Legislature hereby authorizes a clean needle
- 14 and syringe exchange project pursuant to this chapter in any city,
- 15 county, or city and county upon the action of a county board of
- 16 supervisors and the local health officer or health commission of
- 17 that county, or upon the action of the city council, the mayor, and
- 18 the local health officer of a city with a health department, or upon

1 the action of the city council and the mayor of a city without a
2 health department.

3 (c) In order to reduce the spread of HIV infection, viral hepatitis,
4 and other potentially deadly bloodborne infections, the State
5 Department of Public Health may, notwithstanding any other law,
6 authorize entities that provide services set forth in paragraph (1)
7 of subdivision (d), and that have sufficient staff and capacity to
8 provide the services described in Section 121349.1, as determined
9 by the department, to apply for authorization under this chapter to
10 provide hypodermic needle and syringe exchange services
11 consistent with state and federal standards, including those of the
12 United States Public Health Service, in any location where the
13 department determines that the conditions exist for the rapid spread
14 of HIV, viral hepatitis, or any other potentially deadly or disabling
15 infections that are spread through the sharing of used hypodermic
16 needles and syringes.

17 (d) In order for an entity to be authorized to conduct a project
18 pursuant to this chapter, its application to the department shall
19 demonstrate that the entity complies with all of the following
20 minimum standards:

21 (1) The entity provides, directly or through referral, ~~any~~ all of
22 the following services:

23 (A) Drug abuse treatment services.

24 (B) HIV or hepatitis-C screening.

25 (C) Hepatitis A and hepatitis B vaccination.

26 (D) Screening for sexually transmitted infections.

27 (E) Housing services for the homeless, for victims of domestic
28 violence, or other similar housing services.

29 (F) Services related to provision of education and materials for
30 the reduction of sexual risk behaviors, including, but not limited
31 to, the distribution of condoms.

32 (2) The entity has the capacity to commence needle and syringe
33 exchange services within three months of authorization.

34 (3) The entity has adequate funding to do all of the following
35 at reasonably projected program participation levels:

36 (A) Provide needles and syringe exchange services for all of its
37 participants.

38 (B) Provide HIV and viral hepatitis prevention education
39 services for all of its participants.

1 (C) Provide for the safe recovery and disposal of used syringes
2 and sharps waste from all of its participants.

3 (4) The entity has the capacity, and an established plan, to collect
4 evaluative data in order to assess program impact, including, but
5 not limited to, all of the following:

6 (A) The total number of persons served.

7 (B) The total number of syringes and needles distributed,
8 recovered, and disposed of.

9 (C) The total numbers and types of referrals to drug treatment
10 and other services.

11 (5) If the application is provisionally deemed appropriate by
12 the department, the department shall, at least 45 days prior to
13 approval of the application, provide for a period of public comment
14 as follows:

15 (A) Post on the department's Internet Web site the name of the
16 applicant, the nature of the services, and the location where the
17 applying entity will provide the services.

18 (B) Send a written and an ~~electronic mail~~ *e-mail* notice to the
19 local health officer of the affected jurisdiction.

20 (e) The department shall establish and maintain on its Internet
21 Web site the address and contact information of programs
22 providing hypodermic needle and syringe exchange services
23 *pursuant to this chapter*.

24 (f) The authorization provided under this section shall only be
25 for a clean needle and syringe exchange project as described in
26 Section 121349.1.

27 SEC. 2. Section 121349.1 of the Health and Safety Code is
28 amended to read:

29 121349.1. The State Department of Public Health or a city,
30 county, or a city and county with or without a health department,
31 that acts to authorize a clean needle and syringe exchange project
32 pursuant to this chapter shall, in consultation with the State
33 Department of Public Health, authorize the exchange of clean
34 hypodermic needles and syringes, as recommended by the United
35 States Public Health Service, subject to the availability of funding,
36 as part of a network of comprehensive services, including treatment
37 services, to combat the spread of HIV and bloodborne hepatitis
38 infection among injection drug users. Staff and volunteers
39 participating in an exchange project authorized by the state, county,
40 city, or city and county pursuant to this chapter shall not be subject

1 to criminal prosecution for violation of any law related to the
2 possession, furnishing, or transfer of hypodermic needles or
3 syringes during participation in an exchange project. Program
4 participants shall not be subject to criminal prosecution for
5 possession of needles or syringes acquired from an authorized
6 needle and syringe exchange project entity.

7 SEC. 3. Section 121349.2 of the Health and Safety Code is
8 amended to read:

9 121349.2. Local government, local health officials, and law
10 enforcement shall be given the opportunity to comment on clean
11 needle and syringe exchange programs on a biennial basis. The
12 public shall be given the opportunity to provide input to local
13 leaders to ensure that any potential adverse impacts on the public
14 welfare of clean needle and syringe exchange programs are
15 addressed and mitigated.

16 SEC. 4. Section 121349.3 of the Health and Safety Code is
17 amended to read:

18 121349.3. The health officer of the participating jurisdiction
19 shall present biennially at an open meeting of the board of
20 supervisors or city council a report detailing the status of clean
21 needle and syringe exchange programs, including, but not limited
22 to, relevant statistics on bloodborne infections associated with
23 needle sharing activity and the use of public funds for these
24 programs. Law enforcement, administrators of alcohol and drug
25 treatment programs, other stakeholders, and the public shall be
26 afforded ample opportunity to comment at this biennial meeting.
27 The notice to the public shall be sufficient to ~~assure~~ ensure
28 adequate participation in the meeting by the public. This meeting
29 shall be noticed in accordance with all state and local open meeting
30 laws and ordinances, and as local officials deem appropriate. For
31 hypodermic needle and syringe exchange services authorized by
32 the State Department of Public Health, a biennial report shall be
33 provided by the department to the local health officer based on the
34 reports to the department from service providers within the
35 jurisdiction of that local health officer.

CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS



BILL NUMBER: AB 604

VERSION: As Amended April 5, 2011

AUTHOR: Skinner

SPONSOR: Drug Policy Alliance

COMMITTEE RECOMMENDED POSITION: Support

SUBJECT: Needle exchange programs.

Affected Sections: An act to amend Sections 121349, 121349.1, 121349.2, and 121349.3 of the Health and Safety Code

CURRENT STATUS: Assembly Third Reading

EXISTING LAW:

Health and Safety Code Section 121349

1. Sets for legislative findings and declarations about needle exchange programs (NEPs).
2. Authorizes a clean needle and syringe exchange project in any city and county as specified.

Health and Safety Code Section 121349.1

Requires a city or county that approves such a project shall, in consultation with the State Department of Public Health, authorize the exchange of clean needles and syringes under conditions as specified.

Health and Safety Code Section 121349.2

Provides for an opportunity to comment on such a program on an annual basis.

Health and Safety Code Section 121349.3

1. Requires that the health officer of the participating jurisdiction shall present annually at an open meeting of the board of supervisors or city council a report detailing the program including, relevant statistics on blood-borne infections associated with needle sharing activity and the use of public funds for these programs.
2. Specifies that law enforcement, other stakeholders and the public be provided ample opportunity to provide comment during this meeting.

THIS BILL WOULD:

1. Allow the California Department of Public Health to also authorize NEPs, consistent with state and federal standards, and set for the application criteria.
2. Require the department to hold a public meeting at least 45 days prior to approving the program, as specified.
3. Clarify that the California Department of Public Health, a city, county or a city and county, with or without a department of public health department, may provide an NEP pursuant to appropriate authorizations. Also specifies that program participants shall not be subject to criminal prosecution for possession.
4. Would require an opportunity for public comment on any city or county program on a biennial basis.
5. Would require the health officer to present on a biennial basis, a report detailing the program relevant statistics on *bloodborne* infections associated with needle sharing activity and the use of public funds for these programs, either to the city or county, or to the department.

AUTHOR'S INTENT:

The author notes that the state lacks the authority to respond to urgent public health and fiscal concerns in parts of the state. Counties without a syringe exchange are amongst the counties with the highest number of AIDS cases related to syringe sharing, and with the highest per capita rate of AIDS from syringe sharing.

FISCAL/ECONOMIC IMPACT:

The bill does not have any significant fiscal impact to the board.

PREVIOUS/RELATED LEGISLATION:

SB 1159 (Vasconcellos) Chapter 608, Statutes of 2004 - Furnishing Hypodermic Needles and Syringes Without Prescription authorized until December 31, 2010, a pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, which would be created to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C. Detailed records of nonprescription sales of hypodermic needles and syringes are no longer required. The board had a support position on this bill.

SB 774 (Vasconcellos, 2005) would have authorized a licensed pharmacist to sell or furnish 30 or fewer hypodermic needles or syringes to a person for human use without a prescription as specified. The board supported this bill; however it was vetoed by the governor.

SB 1305 (Figueroa) Chapter 64, Statutes of 2006, prohibited a person from knowingly placing home-generated sharps waste in commercial and residential solid waste collection containers after September 1, 2008.

AB 110 (Laird), Chapter 707, Statutes of 2007, permits a public entity that receives General Fund money from the Department of Health Services (now DPH) for HIV prevention and education to use that money to support needle exchange programs. The board had a support position on this bill.

AB 1701 (Chesbro, Chapter 667, Statutes of 2010), extended the Disease Prevention Demonstration Project (DPDP) until December 31, 2018, which permits cities or counties to authorize licensed pharmacists to sell or furnish 10 or fewer hypodermic needles or syringes to a person for use without a prescription, as specified. This will was signed by the governor.

AB 1858 (Blumenfield, 2010) would have allowed the California Department of Public Health to authorize entities to provide hypodermic needle and syringe exchange programs in any location where the department determines conditions exist for the rapid spread of deadly or disabling disease spread through the sharing of unclean hypodermic needles and syringes. This bill was vetoed by the governor.

“I am returning Assembly Bill 1858 without my signature. I signed legislation in 2005 that reflected a careful balance between good public health policy and local decision-making authority. I remain comfortable with that original decision and do not believe it is appropriate to change this balance and instead give authority to the state Department of Public Health to overrule local decisions regarding syringe exchange programs. For this reason, I am unwilling to sign this bill.”

SB 1029 (Yee, 2010) contained many of the same provisions. The governor vetoed this measure.

“I am returning Senate Bill 1029 without my signature. When I signed legislation my first year in office allowing for a pilot program to allow the sale of syringes through participating counties and registered pharmacies, I was seeking to balance the competing public health, law enforcement and local control issues that this issue requires. I believe this balance was achieved and SB 1029 would remove the ability of local officials to best determine policies in their jurisdiction. Some counties have not sought to implement this pilot program, citing competing priorities, lack of pharmacy interest and law enforcement opposition. I respect these local decisions and while I appreciate the author's hard work and dedication to this issue, I cannot sign this bill.”

SUPPORT/OPPOSITION:Support

Drug Policy Alliance

County Alcohol and Drug Program Administrators Association of California

Common Ground: The Westside HIV Community Center

Oppose

Unknown

HISTORY:**Date Action**

Apr. 14 Read second time. Ordered to third reading.

Apr. 13 From committee: Do pass. (Ayes 12. Noes 3.) (April 13).

Apr. 6 Re-referred to Com. on APPR.

Apr. 5 Read second time and amended.

Apr. 4 From committee: Do pass as amended and re-refer to Com. on APPR.
(Ayes 13. Noes 6.) (March 29).

Mar. 21 Re-referred to Com. on HEALTH.

Mar. 17 Referred to Com. on HEALTH. From committee chair, with author's
amendments: Amend, and re-refer to Com. on HEALTH. Read second
time and amended.

Feb. 17 From printer. May be heard in committee March 19.

Feb. 16 Read first time. To print.

Introduced by Senator Yee

December 7, 2010

An act to amend Sections 4145 and 4148 of, and to repeal Section 4140 of, the Business and Professions Code, and to amend Section 11364 of, to add Section 121281 to, and to repeal Chapter 13.5 (commencing with Section 121285) of Part 4 of Division 105 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 41, as introduced, Yee. Hypodermic needles and syringes.

Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes, and requires, with certain exceptions, a prescription to purchase a hypodermic needle or syringe for human use. Existing law prohibits any person from possessing or having under his or her control any hypodermic needle or syringe, except in accordance with those regulatory provisions.

This bill would delete the prohibition against any person possessing or having under his or her control any hypodermic needle or syringe, except in accordance with the aforementioned regulatory provisions.

Existing law, beginning January 1, 2011, and ending December 31, 2018, authorizes a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person 18 years of age or older for human use without a prescription if the pharmacist works for a pharmacy that is registered with a local health department in the Disease Prevention Demonstration Project, established by law to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of bloodborne pathogens, including HIV and hepatitis C.

This bill would, instead, delete the December 31, 2018, repeal date and permit a physician or pharmacist, without a prescription or a permit, to furnish 30 or fewer hypodermic needles and syringes for human use to a person 18 years of age or older and would permit a person 18 years of age or older, without a prescription or license, to obtain 30 or fewer hypodermic needles and syringes solely for personal use from a physician or pharmacist. This bill would make conforming changes, including the elimination of the Disease Prevention Demonstration Project.

Under existing law, it is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances.

Existing law, beginning January 1, 2011, and ending December 31, 2018, provides that the above-described provisions, pursuant to authorization from a city or county, shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes.

This bill would, instead, delete the December 31, 2018, repeal date and provide that the above-described provisions making it unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia for unlawfully injecting or smoking certain controlled substances shall not apply to possession solely for personal use of 30 or fewer hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

This bill would require the state Office of AIDS to develop and maintain information on its Internet Web site to educate consumers at risk of bloodborne infections of opportunities to improve and protect their health, and to protect the public health and would also require the California State Board of Pharmacy to post, or post a link to, this information on its Internet Web site.

The Pharmacy Law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes. Existing law makes it a crime to knowingly violate any provision relating to the Pharmacy Law.

This bill would amend the Pharmacy Law to require pharmacies that furnish nonprescription hypodermic needles and syringes to store the hypodermic needles and syringes in a manner that ensures that they are not accessible to unauthorized persons, and would require pharmacies to provide consumers with prescribed options for consumer disposal of

hypodermic needles and syringes. This bill would also require the pharmacies to provide written information or verbal counseling at the time of furnishing or sale of nonprescription hypodermic needles or syringes, as specified. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to improve access
2 to syringes and hypodermic needles so as to remove significant
3 barriers for persons seeking to protect their health and the health
4 of other persons, and to remove barriers for programs or businesses
5 to provide sterile injection equipment and education to adults,
6 thereby reducing the spread of communicable diseases and
7 protecting the public health.

8 SEC. 2. Section 4140 of the Business and Professions Code is
9 repealed.

10 ~~4140. No person shall possess or have under his or her control~~
11 ~~any hypodermic needle or syringe except when acquired in~~
12 ~~accordance with this article.~~

13 SEC. 3. Section 4145 of the Business and Professions Code is
14 amended to read:

15 4145. (a) Notwithstanding any other provision of law, a
16 pharmacist or physician may, without a prescription or a permit,
17 furnish hypodermic needles and syringes for human use, and a
18 person may, without a prescription or license, obtain hypodermic
19 needles and syringes from a pharmacist or physician for human
20 use, ~~if one the person is known to the furnisher and the furnisher~~
21 ~~has previously been provided a prescription or other proof of the~~
22 ~~following requirements is met:~~ *a legitimate medical need requiring*
23 *a hypodermic needle or syringe to administer a medicine or*
24 *treatment.*

1 ~~(1) The person is known to the furnisher and the furnisher has~~
2 ~~previously been provided a prescription or other proof of a~~
3 ~~legitimate medical need requiring a hypodermic needle or syringe~~
4 ~~to administer a medicine or treatment.~~

5 ~~(2) Pursuant to authorization by a county, with respect to all of~~

6 ~~(b) Notwithstanding any other provision of the territory within~~
7 ~~the county, or a city, with respect to the territory within the city,~~
8 ~~for the period commencing January 1, 2005, and ending December~~
9 ~~31, 2018, law, as a public health measure intended to prevent the~~
10 ~~transmission of HIV, viral hepatitis, and other bloodborne diseases~~
11 ~~among persons who use syringes and hypodermic needles, and to~~
12 ~~prevent subsequent infection of sexual partners, newborn children,~~
13 ~~or other persons, a physician or pharmacist may furnish may,~~
14 ~~without a prescription or sell 10 a permit, furnish 30 or fewer~~
15 ~~hypodermic needles or and syringes at any one time for human~~
16 ~~use to a person 18 years of age or older if the pharmacist works~~
17 ~~for a pharmacy that is registered with the Disease Prevention~~
18 ~~Demonstration Project pursuant to Chapter 13.5 (commencing~~
19 ~~with Section 121285) of Part 4 of Division 105 of the Health and~~
20 ~~Safety Code and the pharmacy complies with the provisions of~~
21 ~~that chapter, and a person 18 years of age or older may, without~~
22 ~~a prescription or license, obtain 30 or fewer hypodermic needles~~
23 ~~and syringes solely for personal use from a physician or~~
24 ~~pharmacist.~~

25 ~~(b)~~

26 ~~(c) Notwithstanding any other provision of law, a pharmacist,~~
27 ~~veterinarian, or person licensed pursuant to Section 4141 may,~~
28 ~~without a prescription or license, furnish hypodermic needles and~~
29 ~~syringes for use on animals, and a person may, without a~~
30 ~~prescription or license, obtain hypodermic needles and syringes~~
31 ~~from a pharmacist, veterinarian, or person licensed pursuant to~~
32 ~~Section 4141 for use on animals, providing that no needle or~~
33 ~~syringe shall be furnished to a person who is unknown to the~~
34 ~~furnisher and unable to properly establish his or her identity.~~

35 ~~(d) A pharmacy that furnishes nonprescription hypodermic~~
36 ~~needles and syringes shall store hypodermic needles and syringes~~
37 ~~in a manner that ensures that they are available only to authorized~~
38 ~~personnel, and are not accessible to other persons.~~

39 ~~(e) In order to provide for the safe disposal of hypodermic~~
40 ~~needles and syringes, a pharmacy that furnishes nonprescription~~

hypodermic needles and syringes shall provide consumers with one or more of the following disposal options:

(1) It shall establish an onsite, safe, hypodermic needle and syringe collection and disposal program.

(2) It shall furnish, or make available, mail-back sharps disposal containers authorized by the United States Postal Service that meet applicable state and federal requirements, and shall provide tracking forms to verify destruction at a certified disposal facility.

(3) It shall furnish, or make available, a personal medical sharps disposal container that meets applicable state and federal standards for disposal of medical sharps waste.

(f) A pharmacy that furnishes nonprescription syringes shall provide written information or verbal counseling to consumers at the time of furnishing or sale of nonprescription hypodermic needles or syringes on how to do the following:

(1) Access drug treatment.

(2) Access testing and treatment for HIV and hepatitis C.

(3) Safely dispose of sharps waste.

SEC. 4. Section 4148 of the Business and Professions Code is amended to read:

4148. All stocks of hypodermic needles or syringes shall be confiscated if found outside the licensed premises of any person holding a permit under Section 4141 and found not in the possession or under the control of a person entitled to an exemption under Section 4143, 4144, or 4145, or under Section 11364, 121349, or 121349.1 of the Health and Safety Code.

SEC. 5. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a

1 container that meets state and federal standards for disposal of
2 sharps waste.

3 ~~(c) Pursuant to authorization by a county, with respect to all of~~
4 ~~the territory within the county, or a city, with respect to the territory~~
5 ~~within in the city, for the period commencing January 1, 2005, and~~
6 ~~ending December 31, 2018, subdivision (a) As a public health~~
7 ~~measure intended to prevent the transmission of HIV, viral~~
8 ~~hepatitis, and other bloodborne diseases among persons who use~~
9 ~~syringes and hypodermic needles, and to prevent subsequent~~
10 ~~infection of sexual partners, newborn children, or other persons,~~
11 ~~this section shall not apply to the possession solely for personal~~
12 ~~use of 10 30 or fewer hypodermic needles or syringes if acquired~~
13 ~~from an a physician, pharmacist, hypodermic needle and syringe~~
14 ~~exchange program, or any other source that is authorized source~~
15 ~~by law to provide sterile syringes or hypodermic needles without~~
16 ~~a prescription.~~

17 SEC. 6. Section 121281 is added to the Health and Safety Code,
18 to read:

19 121281. In order to assist pharmacists and pharmacy personnel
20 in the education of consumers who are at risk of bloodborne
21 infections regarding methods and opportunities for improving and
22 protecting their health, and thereby protect the public health, the
23 Office of AIDS shall develop and maintain all of the following
24 information, on its Internet Web site, and the California State Board
25 of Pharmacy shall also post, or maintain a link to, the information
26 on its Internet Web site:

27 (a) How consumers can access testing and treatment for HIV
28 and viral hepatitis.

29 (b) How consumers can safely dispose of syringes and
30 hypodermic needles or other sharps waste.

31 (c) How consumers can access drug treatment.

32 SEC. 7. Chapter 13.5 (commencing with Section 121285) of
33 Part 4 of Division 105 of the Health and Safety Code is repealed.

34 SEC. 8. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: SB 41

VERSION: As Introduced December 7, 2010

AUTHOR: Yee

**SPONSOR: San Francisco Aids Foundation
Drug Policy Alliance**

COMMITTEE RECOMMENDED POSITION: Support

SUBJECT: Hypodermic Needles and Syringes

Affected Sections: Business and Professions Code
Amend Sections 4145 and 4148
Repeal Section 4140
Health and Safety Code
Amend Sections 11364
Add Section 121281
Repeal Chapter 13.5 (commencing with Section 121285)

CURRENT STATUS: Senate Health Committee Hearing April 6, 2011

EXISTING LAW:

1. Allows a pharmacist, if authorized by a county or city, to furnish or sell 10 or fewer hypodermic needles or syringes at any one time as specified.
2. Establishes a December 31, 2018 sunset date for this provision.
3. Specified that no person shall possess a hypodermic needle or syringe except when acquired in accordance with specified provisions of the law.
4. Allows a pharmacist or physician to furnish hypodermic needles or syringes for human use without a prescription or permit if the person is known to the furnisher and the furnisher has been previously provided with a prescription or proof of legitimate medical need.
5. Establishes the Disease Prevention Demonstration Project (DPDP) as collaboration between pharmacies and local and state health officials for the purpose of evaluating the long-term desirability of allowing licensed pharmacists to furnish or sell nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.
6. Allows for a person to possess, for personal use, 10 or fewer hypodermic needles and syringes if acquired from an authorized source.

7. Allows local governments, local health officers, and law enforcement, the opportunity to comment on needle exchange programs (NEPs) on an annual basis.

THIS BILL WOULD:

1. Repeal the section prohibiting a person from possessing a hypodermic needle or syringe except as provided in Article 9 (Hypodermic Needles and Syringes).
2. Allow a physician or pharmacist to furnish hypodermic needles and syringes, without a prescription, if the person is known to the furnisher and the furnisher has previously been provided a prescription or other proof of the legitimate medical need to administer a medicine or treatment.
3. Allow a physician or pharmacist to furnish 30 or fewer hypodermic needles and syringes for human use to a person 18 years of age or older for personal use.
4. Specify that pharmacies shall furnish such products in a manner to ensure that they are only available to authorized personnel.
5. Shall provide consumers with disposal options including an onsite collection program or make available mail-back sharps containers or personal medical sharps disposal containers.
6. Shall provide written information or verbal counseling to patients about access to drug treatment, testing and treatment for HIV and hepatitis C and safe disposal of sharps waste.
7. Specify that all stocks of needles and syringes shall be confiscated if found outside the licensed premises or found not in the possession or control of a person entitled under these provisions.
8. Make conforming changes to H&SC 11364 allowing for possession of up to 30 needles or syringes.
5. Remove the requirement for local authorization through a vote of a Board of Supervisors or City Council.
6. Require Office of Aids to develop and maintain information on its website about accessing drug treatment, accessing HIV and hepatitis screenings and safe disposal of syringe and sharps waste; require the Board to either post or maintain a link to the same information on its website.

AUTHOR'S INTENT:

According to the author, the intent of the bill is to improve access to hypodermic needles and syringes in order to remove significant barriers for persons seeking to protect their health and the health of other persons. The author also seeks to remove barriers for programs or businesses to provide sterile injection equipment and education to adults.

FISCAL IMPACT:

The bill does not have any significant fiscal impact to the board. As the measure may impact a licensee or entity under the board's jurisdiction, it is possible that the board

may exercise regulatory authority over any related activities within a licensee's scope of practice or authority. The board could likely utilize existing resources to comply with the posting requirements.

PREVIOUS/CURRENT LEGISLATION:

SB 1159 (Vasconcellos) Chapter 608, Statutes of 2004 - Furnishing Hypodermic Needles and Syringes Without Prescription authorized until December 31, 2010, a pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, which would be created to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C. Detailed records of nonprescription sales of hypodermic needles and syringes are no longer required. The board had a support position on this bill.

SB 774 (Vasconcellos, 2005) would have authorized a licensed pharmacist to sell or furnish 30 or fewer hypodermic needles or syringes to a person for human use without a prescription as specified. The board supported this bill; however it was vetoed by the governor.

SB 1305 (Figueroa) Chapter 64, Statutes of 2006, prohibited a person from knowingly placing home-generated sharps waste in commercial and residential solid waste collection containers after September 1, 2008.

AB 110 (Laird), Chapter 707, Statutes of 2007, permits a public entity that receives General Fund money from the Department of Health Services (now DPH) for HIV prevention and education to use that money to support needle exchange programs. The board had a support position on this bill.

AB 1701 (Chesbro, Chapter 667, Statutes of 2010), extended the Disease Prevention Demonstration Project (DPDP) until December 31, 2018, which permits cities or counties to authorize licensed pharmacists to sell or furnish 10 or fewer hypodermic needles or syringes to a person for use without a prescription, as specified. This bill was signed by the governor.

AB 1858 (Blumenfield, 2010) would have allowed the California Department of Public Health to authorize entities to provide hypodermic needle and syringe exchange programs in any location where the department determines conditions exist for the rapid spread of deadly or disabling disease spread through the sharing of unclean hypodermic needles and syringes. This bill was vetoed by the governor.

"I am returning Assembly Bill 1858 without my signature. I signed legislation in 2005 that reflected a careful balance between good public health policy and

local decision-making authority. I remain comfortable with that original decision and do not believe it is appropriate to change this balance and instead give authority to the state Department of Public Health to overrule local decisions regarding syringe exchange programs. For this reason, I am unwilling to sign this bill.”

SB 1029 (Yee, 2010) contained many of the same provisions. The governor vetoed this measure.

“I am returning Senate Bill 1029 without my signature. When I signed legislation my first year in office allowing for a pilot program to allow the sale of syringes through participating counties and registered pharmacies, I was seeking to balance the competing public health, law enforcement and local control issues that this issue requires. I believe this balance was achieved and SB 1029 would remove the ability of local officials to best determine policies in their jurisdiction. Some counties have not sought to implement this pilot program, citing competing priorities, lack of pharmacy interest and law enforcement opposition. I respect these local decisions and while I appreciate the author's hard work and dedication to this issue, I cannot sign this bill.”

SUPPORT and OPPOSITION:

Support

Drug Policy Alliance (sponsor)
San Francisco AIDS Foundation (co-sponsor)
ACLU
AFSCME
AIDS Project Los Angeles
Alameda County Board of Supervisors
California Hepatitis Alliance
California Medical Association
California Nurses Association
California Opioid Maintenance Providers
California Pharmacists Association
California Psychiatric Association
California Retailers Association
County Alcohol and Drug Program Administrators Association of California
CVS/Caremark
Drug Policy Alliance
Friends Committee on Legislation of California
Health Officers Association of California
Rite Aid
San Francisco Hepatitis C Task Force
Santa Clara County Board of Supervisors
Walgreens

Oppose

Association of Los Angeles Deputy Sheriffs
California District Attorneys Association

HISTORY:

Date	Action
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Apr. 14	Set for hearing April 26.
Apr. 7	From committee: Do pass and re-refer to Com. on PUB. S. (Ayes 5. Noes 3. Page 580.) (April 6). Re-referred to Com. on PUB. S.
Mar. 15	Set for hearing April 6.
Mar. 14	Set, first hearing. Hearing canceled at the request of author.
Mar. 4	Set for hearing March 23.
Jan. 20	Referred to Coms. on HEALTH and PUB. S.
Jan. 3	Read first time.
2010	
Dec. 8	From printer. May be acted upon on or after January 7.
Dec. 7	Introduced. To Com. on RLS. for assignment. To print.

Introduced by Senator Simitian

February 17, 2011

An act to add ~~Section 11110~~ *Sections 11110 and 11111* to the Health and Safety Code, relating to nonprescription drugs.

LEGISLATIVE COUNSEL'S DIGEST

SB 514, as amended, Simitian. Dextromethorphan: sale to minors prohibited.

Existing law prohibits a manufacturer, wholesaler, retailer, or other person from selling, transferring, or otherwise furnishing a specified substance, including ephedrine and pseudoephedrine, to a person under 18 years of age, except as specified. A first violation of this provision is a misdemeanor. Existing law further regulates the sale of nonprescription drugs, as specified.

This bill would, in addition, make it an infraction for any person, *corporation, or retail distributor*, in an over-the-counter sale to, without a prescription, *to* willfully and knowingly *supply, deliver, or give possession of a nonprescription drug containing dextromethorphan* to a person under 18 years of age ~~a nonprescription drug containing dextromethorphan~~. *The bill would provide that proof that bona fide evidence of majority and identity was demanded and shown shall be a defense to any criminal prosecution.*

The bill would further provide that a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction; or subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer, unless the retail clerk is a willful participant in an ongoing criminal conspiracy to violate the

provisions prohibiting the sale of dextromethorphan to minors. By creating new crimes, this bill would impose a state-mandated local program.

The bill would require a person, corporation, or retail distributor that sells a product containing dextromethorphan to use a cash register that is equipped with an age-verification feature that directs the retail clerk to request identification before the product may be purchased, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11110 is added to the Health and Safety
2 Code, to read:

3 11110. (a) It shall be an infraction for any person ~~in an~~
4 ~~over-the-counter sale to, without a prescription,, corporation, or~~
5 ~~retail distributor to willfully and knowingly deliver to a person~~
6 ~~under 18 years of age supply, deliver, or give possession of a drug,~~
7 material, compound, mixture, preparation, or substance containing
8 any quantity of dextromethorphan (the dextrorotatory isomer of
9 3-methoxy-N-methylmorphinan, including its salts, but not
10 including its racemic or levorotatory forms) *to a person under 18*
11 *years of age in an over-the-counter sale without a prescription.*

12 (b) ~~(1)~~ It shall be prima facie evidence of a violation of this
13 section if the person, *corporation, or retail distributor* making the
14 sale does not require and obtain ~~proof of age~~ *bona fide evidence*
15 *of majority and identity* from the purchaser, unless from the
16 purchaser's outward appearance the person making the sale would
17 reasonably presume the purchaser to be 25 years of age or older.

18 ~~(2) For the purposes of this section, "proof of age" means any~~
19 ~~document issued by a governmental agency that contains a~~
20 ~~description or photograph of the person and gives the person's~~
21 ~~date of birth, including a passport, military identification card, or~~
22 ~~driver's license.~~

1 ~~(e) It shall be an affirmative defense to a violation of this section~~
2 ~~if the defendant proves, by a preponderance of the evidence, all~~
3 ~~of the following:~~

4 ~~(1) The person making the sale required and obtained proof of~~
5 ~~age from the purchaser.~~

6 ~~(2) The purchaser falsely represented his or her age by the use~~
7 ~~of a false, forged, or altered document.~~

8 ~~(3) The appearance of the purchaser would lead an ordinary and~~
9 ~~prudent person to believe that the purchaser was at least 18 years~~
10 ~~of age.~~

11 ~~(4) The sale was made in good faith and in reliance upon the~~
12 ~~appearance and representation of proof of age of the purchaser.~~

13 ~~(c) Proof that a person, corporation, or retail distributor, or~~
14 ~~his or her agent or employee, demanded, was shown, and acted~~
15 ~~in reasonable reliance upon, bona fide evidence of majority and~~
16 ~~identity shall be a defense to any criminal prosecution under this~~
17 ~~section. As used in this section, “bona fide evidence of majority~~
18 ~~and identity” means a document issued by a federal, state, county,~~
19 ~~or municipal government, or subdivision or agency thereof,~~
20 ~~including, but not limited to, a motor vehicle operator’s license,~~
21 ~~California state identification card, identification card issued to~~
22 ~~a member of the Armed Forces, or other form of identification that~~
23 ~~bears the name, date of birth, description, and picture of the~~
24 ~~person.~~

25 ~~(d) (1) Notwithstanding any other provision of this section, a~~
26 ~~retail clerk who fails to require and obtain proof of age from the~~
27 ~~purchaser shall not be guilty of an infraction pursuant to~~
28 ~~subdivision (a); or subject to any civil penalties, or subject to any~~
29 ~~disciplinary action or discharge by his or her employer.~~

30 ~~(2) This subdivision shall not apply to a retail clerk who is a~~
31 ~~willful participant in an ongoing criminal conspiracy to violate~~
32 ~~this section.~~

33 *SEC. 2. Section 11111 is added to the Health and Safety Code,*
34 *to read:*

35 *11111. A person, corporation, or retail distributor that sells*
36 *or makes available products containing dextromethorphan, as*
37 *defined in subdivision (a) of Section 11110, in an over-the-counter*
38 *sale without a prescription shall, if feasible, use a cash register*
39 *that is equipped with an age-verification feature to monitor*
40 *age-restricted items. The cash register shall be programmed to*

1 *direct the retail clerk making the sale to request bona fide evidence*
2 *of majority and identity, as described in subdivision (c) of Section*
3 *11110, before a product containing dextromethorphan may be*
4 *purchased.*

5 ~~SEC. 2.~~

6 SEC. 3. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

**CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS**



BILL NUMBER: SB 514

VERSION: As Amended April 25, 2011

AUTHOR: Simitian

SPONSOR: Author

BOARD POSITION: None

SUBJECT: Dextromethorphan: sale to minors prohibited

Affected Sections: Add Sections 11110 and 11111 to the Health and Safety Code

CURRENT STATUS: Hearing scheduled for Senate Public Safety Committee for May 3, 2011.

EXISTING LAW:

1. Health and Safety Code Section 11100 establishes the conditions and reporting requirements for the sale of ephedrine and pseudoephedrine to a person under 18 years of age.
2. Regulates the sale of nonprescription drugs.

THIS BILL WOULD:

1. State that it shall be an infraction to sell willfully and knowingly to a person under 18 years of age, an over-the-counter drug, material, compound, mixture, preparation or substance containing dextromethorphan without a prescription.
2. State it shall be prima facie evidence of a violation if the person making the sale does not require and obtain "proof of age" from anyone presumably younger than 25.
 - a. Defines "proof of age" as any document issued by a government agency that contains a description or photo and provides the person's date of birth.
3. State it shall be affirmative defense to a violation if the defendant can prove all of the following:
 - a. Proof of age was obtained as required
 - b. The purchaser provided false representation of his or her age
 - c. The appearance of the purchaser would lead an ordinary person to believe the purchaser was at least 18 years old.
 - d. The sale was made in good faith based on the information provided.
4. Specify that a retail clerk that fails to obtain proof of age is not guilty of an infraction, subject to civil penalties.

- a. State that this does not apply to a retail clerk that is willfully participating in an ongoing criminal conspiracy to violate these provisions.
5. Specify, that if feasible, the retailer selling the product, use a cash register that is equipped with an age-verification feature to monitor age-restricted items which shall be programmed to direct the clerk to request verification of age prior to the sale.

AUTHOR'S INTENT:

The intent of this legislation is to restrict access to dextromethorphan by minors. According to the author's office, Poison Control reports an 850% increase in the number of calls it has received over the last ten years resulting from dextromethorphan. The author's office also stated that one in ten high school students has abused this drug.

FISCAL IMPACT:

The board does not anticipate any significant impact to board operations.

COMMENTS:

The author's office indicated that there are conversations at the federal level about whether to classify dextromethorphan as a scheduled substance.

As amended, the provisions that prohibited an employer to taking action against a clerk that unlawfully sold this product have been removed, and provisions were added regarding the use of a cash register that is equipped with an age-verification feature to monitor age-restricted items if feasible.

RELATED/PREVIOUS LEGISLATION:

AB 1853 (Simitian, 2003) would have prohibited the sale, without a prescription, of a nonprescription drug containing dextromethorphan to a minor. This bill died on the inactive file.

SB 307 (Simitian, 2005) contained the same general provisions. This bill was never heard in committee.

SUPPORT/OPPOSITION:

Unknown

HISTORY:

Date	Action
Apr. 25	From committee with author's amendments. Read second time and amended. Re-referred to Com. on PUB. S.

Apr. 21 Set for hearing May 3.
Mar. 17 Hearing postponed by committee.
Mar. 9 Set for hearing March 22.
Mar. 3 Referred to Com. on PUB. S.
Feb. 18 From printer. May be acted upon on or after March 20.
Feb. 17 Introduced. Read first time. To Com. on RLS. for assignment. To
print.

LEGISLATION AND REGULATION COMMITTEE

Goal 3: Advocate legislation and promulgate regulations that advance the vision and mission of the Board of Pharmacy.

Outcome: Improve the health and safety of Californians.

Objective 3.1	Annually identify and respond with legislative changes to keep pharmacy laws current and consistent with the board's mission.
Measure:	100 percent successful enactment of promoted legislative changes.
Tasks:	<p>1. Secure extension of board's sunset date.</p> <p><i>1st Qtr 06/07: Governor signs SB 1476 which delays the board's sunset date two years (until 2010), and requires the board's sunset report in 2008.</i></p> <p><i>4th Qtr 06/07: SB 963 (Ridley-Thomas) is amended to alter the sunset review process.</i></p> <p><i>1st Qtr 08/09: SB 963 (Ridley-Thomas) is amended to alter the sunset review process. Board staff attend a stakeholders meeting with committee staff to discuss amendments.</i></p> <p><i>Governor signs SB 963 (Chapter 385, Statutes of 2008)</i></p> <p><i>1st Qtr 09/10: Sunset extension amended into AB 1071. Bill enrolled and sent to Governor.</i></p> <p><i>2nd Qtr 09/10: Governor signs AB 1071 (Chapter 270, Statutes of 2009) to extend the board's sunset date to 2013.</i></p> <p><i>3rd Qtr 09/10: Sunset bills introduced</i></p> <p><i>AB 1659 (Huber) – State Government, Agency Repeals</i></p> <p><i>AB 2130 (Huber) – Joint Committee on Boards, Commissions and Consumer Protection</i></p> <p><i>SB 954 (Harmon) – Legislative Procedure, Committee Referrals</i></p> <p><i>SB 1171 (Negrete McLeod) – Regulatory Boards, Operations</i></p> <p><i>4th Qtr 09/10: SB 954 (Harmon) – Bill is dead (Failed deadline)</i></p> <p><i>SB 1171 (Negrete McLeod) – Bill is dead (Failed deadline)</i></p> <p><i>1st Qtr 10/11: Governor signs AB 1659 (Chapter 666, Statutes of 2010)</i></p> <p><i>Governor signs AB 2130 (Chapter 670, Statutes of 2010)</i></p>

2. **Sponsor legislation to update pharmacy law.**

Enacted - 1st Qtr. 08/09: SB 1048 (Chapter 588, Statutes 2007) containing board omnibus provisions

Oct. 2007: Board sponsors omnibus provisions for 2008. Four types of changes are discussed.

(1) *Changes specific to the PIC and DRC requirements*

- Section 4022.5 – Designated Representative; Designated Representative-in-Charge
- Section 4036.5 – Pharmacist-in-Charge
- Section 4161 – Nonresident wholesaler
- Section 4305 – Pharmacist-in-Charge; Notice to Board; Disciplinary Action
- Section 4329 – Nonpharmacists; Prohibited Acts
- Section 4330 – Proprietors; Prohibited Acts

(2) *Changes to allow for the use of mobile pharmacies*

- Section 4062 – Furnishing Dangerous Drugs During an Emergency.
- Section 4110 – License Required, Temporary Permit Upon Transfer of Ownership.

(3) *General changes*

- Section 4059.5 – Who May order Dangerous Drugs or Devices, Exceptions.
- Section 4081 – Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records, Current Inventory
- Section 4126.5 – Furnishing Dangerous Drugs by Pharmacy.
- Section 4231 – Requirements for Renewal of Pharmacist License: Clock Hours; Exemption for New Licensee.
- H&SC 11165 – Controlled Substance Utilization Review and Evaluation System: Establishment; Operation; Funding; Reporting to Legislature.

(4) *Changes based on recodification of Business and Professions Code section 4052*

- Section 733 – Dispensing Prescription Drugs and Devices
- Section 4027 – Skilled Nursing Facility – Intermediate Care Facility – Other Health Care Facilities
- Section 4040 – Prescription; Content Requirements
- Section 4051 – Conduct Limited to Pharmacist; Conduct Authorized by Pharmacist
- Section 4060 – Controlled Substance – Prescription Required, Exceptions
- Section 4076 – Prescription Container – Requirements for Labeling
- Section 4111 – Restrictions on Prescriber Ownership
- Section 4174 – Dispensing by Pharmacist Upon Order of Nurse Practitioner
- H&SC 11150 – Persons Authorized to Write or Issue a Prescription

	<p>Jan. 2008: <i>Staff provides language to Senate Business and Professions Committee for inclusion in omnibus bill SB 1779.</i></p> <p><i>Board approved language for omnibus bill.</i></p> <p>April 2008: <i>Some provisions of omnibus bill removed:</i></p> <ul style="list-style-type: none"> • <i>Section 4101 – Pharmacist-in-Charge; Designated Representative-in-Charge; Termination of Status; Duty to Notify the Board.</i> • <i>Section 4113 – Pharmacist-in-Charge; Approval; Responsibilities; Notifications</i> • <i>Section 4160 – Wholesaler Licenses</i> • <i>Section 4196 – Veterinary Food-Animal Drug Retailer Licenses; Persons Allowed in Areas Where Drugs are Stored, Possessed, or Repacked</i> • <i>Section 4362 – Entry Into Pharmacists Recovery Program.</i> <p>Oct. 2008: <i>Governor vetoes SB 1779</i></p> <p>1st Qtr 08/09: <i>Board seeks to pursue omnibus provisions (formerly contained in SB 1779). Four areas of change: (Included in SB 819)</i></p> <p><i>(1) Changes specific to the PIC and DRC requirements</i></p> <ul style="list-style-type: none"> • <i>Section 4022.5 – Designated Representative; Designated Representative-in-Charge</i> • <i>Section 4036.5 – Pharmacist-in-Charge</i> • <i>Section 4305 – Pharmacist-in-Charge; Notice to Board; Disciplinary Action</i> • <i>Section 4329 – Nonpharmacists; Prohibited Acts</i> • <i>Section 4330 – Proprietors; Prohibited Acts</i> <p><i>(2) Changes to allow for the use of mobile pharmacies</i></p> <ul style="list-style-type: none"> • <i>Section 4062 – Furnishing Dangerous Drugs During an Emergency.</i> • <i>Section 4110 – License Required, Temporary Permit Upon Transfer of Ownership.</i> <p><i>(3) General changes</i></p> <ul style="list-style-type: none"> • <i>Section 4059.5 – Who May order Dangerous Drugs or Devices, Exceptions.</i> • <i>Section 4081 – Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records, Current Inventory</i> • <i>Section 4126.5 – Furnishing Dangerous Drugs by Pharmacy.</i> • <i>Section 4231 – Requirements for Renewal of Pharmacist License: Clock Hours; Exemption for New Licensee.</i> <p><i>H&SC 11165 – Controlled Substance Utilization Review and Evaluation System: Establishment; Operation; Funding; Reporting to Legislature.</i></p>
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	<p>(4) <i>Changes based on recodification of Business and Professions Code section 4052</i></p> <ul style="list-style-type: none"> • <i>Section 733 – Dispensing Prescription Drugs and Devices</i> • <i>Section 4027 – Skilled Nursing Facility – Intermediate Care Facility – Other Health Care Facilities</i> • <i>Section 4040 – Prescription; Content Requirements</i> • <i>Section 4051 – Conduct Limited to Pharmacist; Conduct Authorized by Pharmacist</i> • <i>Section 4060 – Controlled Substance – Prescription Required, Exceptions</i> • <i>Section 4076 – Prescription Container – Requirements for Labeling</i> • <i>Section 4111 – Restrictions on Prescriber Ownership</i> • <i>Section 4174 – Dispensing by Pharmacist Upon Order of Nurse Practitioner</i> • <i>H&SC 11150 – Persons Authorized to Write or Issue a Prescription</i> <p>1st Qtr 08/09: <i>Board seeks to introduce additional changes: (Included in SB 821)</i></p> <ul style="list-style-type: none"> • <i>Section 4101 – Pharmacist-in-Charge; Designated Representative-in-Charge; Termination of Status; Duty to Notify the board.</i> • <i>Section 4113 – Pharmacist-in-Charge; Approval; Responsibilities; Notifications</i> • <i>Section 4160 – Wholesaler Licenses</i> • <i>Section 4196 – Veterinary Food-Animal Drug Retailer Licenses; Persons Allowed in Areas Where Drugs are Stored, Possessed, or Repacked</i> • <i>Section 4362 – Entry Into Pharmacists Recovery Program.</i> <p><i>New Provisions</i></p> <ul style="list-style-type: none"> • <i>4200.1 – Pharmacist Examination; Remedial Education</i> • <i>4112 – Non-resident Pharmacy: Registration Required</i> • <i>4146 – Return and Disposal of Sharps</i> • <i>4013 – Subscriber Alert</i> <p>3rd Qtr 08/09: <i>SB 821 introduced</i></p>
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2nd Qtr 09/10: Governor signs SB 819 and SB 821, which contains all omnibus provisions with the exception of 4200.1 - Pharmacists Examination.

3rd Qtr 09/10: Staff provides language to Senate Business Professions and Economic Development Committee for inclusion in two omnibus bills.

Omnibus Proposal #1:

- (1) Amendments to update references to the California Department of Public Health (formerly known as Department of Health Services)
 - §4017 – Authorized Officers of the Law
 - §4027 – Skilled Nursing Facility – Intermediate Care Facility – Other Health Care Facilities
 - §4028 – Definition of Licensed Hospital
 - §4037 – Definition of Pharmacy
 - §4052.3 – Emergency Contraception Drug Therapy; Requirements and Limitations
 - §4072 – Oral or Electronic Transmission of Prescription – Health Care Facility
 - §4101 – Pharmacist-in-Charge, Designated Representative-in-Charge; Termination of Status; Duty to Notify the Board
Prescription: Exceptions.
 - §4119 – Furnish Prescription Drug to Licensed Health Care Facility – Secured Emergency Supplies
 - §4127.1 – License to Compound Injectable Sterile Drug Products Required
 - §4169 – Prohibited Acts (also, strike operative date of 2008)
 - §4181 – License Requirements; Policies and Procedures; Who May Dispense
 - §4191 – Compliance with California Department of Public Health Requirements; Who May dispense Drugs
- (2) Amendment to update a reference to the Physical Therapy Board of California (formerly known as the Physical Therapy Examining Committee of California)
 - §4059 – Furnishing Dangerous Drugs or Devices Prohibited Without Prescription: Exceptions
- (3) Amendments to update references to the State Department of Health Care Services (formerly known as the Department of Health Services)
 - §4425 – Pharmacy Participation in Medi-Cal Program; Conditions; Department of Health Care Services Utilization Review and Monitoring
 - §4426 – Department of Health Care Services to Study Reimbursement Rates

Omnibus Proposal #2

- (1) Amend §4196(e) – Veterinary Food-Animal Drug Retailer; Designated Representative-in-Charge
- (2) Amend §4200.1 – Retaking Examinations; Limits; Requirements (NAPLEX and CPJE 4x Failure)
- (3) Add §4362 – Pharmacists Recovery Program

3rd Qtr 09/10: SB 1489 introduced (Senate Business, Professions, and Economic Development Committee). Includes proposals #1 and #2, with the exception of §4362.

	<p>4th Qtr 09/10: Board establishes support position of SB 1489. SB 1489 is amended to modify §4013 – Subscriber Alert provisions for an owner of two or more pharmacies. SB 1489 is amended to modify §4076.5 – Patient-Centered Prescription Labels to authorize the board to exempt long-term health care facilities from regulations.</p> <p>1st Qtr 10/11: Governor signs SB 1489 (Chapter 653, Statutes of 2010).</p> <p>2nd Qtr 10/11: Board seeks to pursue omnibus provisions Section 4200 – Remove obsolete reference to prior pharmacist examination Staff provides language to Senate Committee on Business, Professions and Economic Development for inclusion in an omnibus bill.</p> <p>3rd Qtr 10/11: Staff provides language to Senate Business Professions and Economic Development for inclusion in Omnibus Bill. SB 943 is introduced. Contains amendments to section 4200.</p> <p>3. Advocate the board’s role and its positions regarding pharmacists’ care and dispensing of dangerous drugs and devices (AB 2408). Sep. 30, 2006: Governor signs AB 2408. Amendments taken in August remove provisions that would have described the professional services provided by pharmacists, and authorized pharmacists outside California to provide pharmacists’ care services to patients in California if licensed here or working within the framework of a nonresident pharmacy. Remaining provisions restructure pharmacist protocol provisions and several other changes.</p> <p>4. Secure statutory standards for pharmacies that compound medications (AB 595). Aug. 2006: Amendments made to remove opposition of DHS regarding pharmacy contracting with another pharmacy for compounded drugs triggers opposition from pharmacy organizations. Board drops AB 595, but will advance regulations developed for compounding pharmacies in the future. Aug. 2008: Regulatory effort initiated. (See Objective 3.2, Task 12) Oct. 2009: Board approves regulatory language for Initial Notice. Jan. 2010: Office of Administrative Law approves regulation. July 2010: Regulation effective.</p> <p>5. Secure implementation of e-pedigrees on prescription drugs dispensed in California. Sep. 2006: Governor signs SB 1476 which contains board amendments to delay implementation of the e-pedigree requirements until 2009, or upon board action, until 2011. Amendments also require interoperability, serialization, returned drug products to retain the initiating pedigree, require notice to the board of suspected or actual counterfeiting, and continuation of the pedigree through repackaging operations. Sep. 2008: Governor signs SB 1307 which delays implementation of e-pedigree.</p>
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	<p>6. Advocate the board's position on pending legislation affecting pharmacy practice and/or the board's jurisdiction.</p> <p>Oct. 2007: Governor signs the following: <i>AB 110 (Chapter 707, Statutes of 2007) Drug Paraphernalia: Clean Needle and Syringe Exchange Projects.</i> <i>SB 472 (Chapter 470, Statutes of 2007) Prescription Drugs: Labeling Requirements.</i> <i>SB 966 (Chapter 542, Statutes of 2007) Pharmaceutical Drug Disposal.</i></p> <p> Governor vetoes the following: <i>AB 249 (Eng) Healing Arts: Settlement Agreements.</i> <i>AB 543 (Plescia) Ambulatory Surgical Centers: Licensure.</i> <i>AB 1025 (Bass) Professions and Vocations: Denial of Licensure.</i> <i>SB 615 (Oropeza) Pharmacy Technicians: Scholarship Fund.</i></p> <p>Oct. 2008: Governor signs the following: <i>AB 1394 (Chapter 431, Statutes of 2008) Counterfeit: Trademarks</i> <i>SB 963 (Chapter 385, Statutes of 2008) Regulatory Boards: Sunset Review</i></p> <p> Governor vetoes the following: <i>AB 501 (Swanson) Pharmaceutical Devices</i> <i>AB 865 (Davis) State Agencies</i> <i>AB1574 (Plescia) Surgical Clinics: Licensure</i></p> <p>Jan. 2009: <i>Legislation introduced affecting Pharmacy law:</i> (New Session) <i>AB 67 (Nava) Pharmacy Patient Protection Act of 2008. Dispensing of prescriptions, irrespective of a pharmacist's ethical, moral, or religious objections.</i> <i>SB 26 (Simitian) Home-generated pharmaceutical wastes and the disposal of devices.</i></p>
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	<p>4th Qtr 08/09: AB 418 (Emmerson) Pharmacy Technicians – Education and CE Requirements AB 484 (Eng) Licensees Not in Compliance with Judgment or Order; Enforcement; Action on a License AB 718 (Emmerson) Prescription Drugs: Electronic Transmissions – Requirement to Electronically Transmit Data by January 2012 AB 830 (Cook) Drugs and Devices. References to US Pharmacopoeia; Compendia Recognized by the Centers of Medicare and Medicaid AB 877 (Emmerson) Healing Arts; DCA Committee Analysis; Scope of Healing Arts Practice AB 931 (Fletcher) Emergency Supplies – Doses Stored in an Emergency Supplies Container AB 1310 (Hernandez) Specifies Mandatory Fields for Initial and Renewal Application Forms (Various Healing Arts Boards). Annual Transmission of Data to Health Care Workforce Clearinghouse (OSHDPD) AB 1370 (Solorio) “Best Before” Date on a Prescription Label AB 1458 (Davis) Drugs: Adverse Effects Reporting SB 26 (Simitian) Home-Generated Pharmaceutical Waste SB 43 (Alquist) Cultural and Linguistic Competency SB 238 (Calderon) Medical Information SB 341 (DeSaulnier) California Department of Public Health to Contract with UC to Evaluate the Safety and Effectiveness of Prescription Drugs SB 389 (McLeod) – FBI and State Fingerprinting Requirements for DCA Boards and Bureaus SB 484 (Wright) Ephedrine Products to Schedule V SB 638 (Negrete McLeod) DCA Regulatory Boards -- Sunset Reviews SB 762 (Aanestad) Professions and Vocations; Healing Arts AB 718 (Emmerson) Prescription Drugs: Electronic Transmissions – Requirement to Electronically Transmit Data by January 2012 AB 830 (Cook) Drugs and Devices. References to US Pharmacopoeia; Compendia Recognized by the Centers of Medicare and Medicaid AB 931 (Fletcher) Emergency Supplies – Doses Stored in an Emergency Supplies Container AB 1310 (Hernandez) Specifies Mandatory Fields for Initial and Renewal Application Forms (Various Healing Arts Boards). Annual Transmission of Data to Health Care Workforce Clearinghouse (OSHDPD) SB 389 (McLeod) – FBI and State Fingerprinting Requirements for DCA Boards and Bureaus SB 484 (Wright) Ephedrine Products to Schedule V SB 638 (Negrete McLeod) DCA Regulatory Boards -- Sunset Reviews SB 762 (Aanestad) Professions and Vocations; Healing Arts</p> <p>1st Qtr 09/10: Governor signs SB 762 (Aanestad) Professions and Vocations; Healing Arts</p> <p>2nd Qtr 09/10: Governor signs SB 819 (Omnibus) Governor vetoes SB 820 (Omnibus) Governor signs SB 821 (Omnibus) Governor signs SB 470 (Corbett) - “Purpose” Governor signs AB 1071 (Emmerson) Pharmacy Fees; Sunset Governor signs AB 931 (Fletcher) - Emergency Supplies Container Governor signs AB 830 (Cook) Drugs and Devices; references to Compendia</p>
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3rd Qtr 09/10: *Board considers new legislation*

1. *Board of Pharmacy*
 - AB 2104 (Hayashi) – California State Board of Pharmacy
 - SB 1390 (Corbett) – Prescription Container Labels
2. *Pharmacy Practice*
 - AB 1869 (Anderson) – Pharmacy (spot bill)
 - AB 1916 (Davis) – Pharmacies: Mandatory Reporting of Med Errors
3. *Sunset Review and Legislative Oversight Proposals*
 - AB 1659 (Huber) – State Government, Agency Repeals
 - AB 2130 (Huber) – Joint Committee on Boards, Commissions and Consumer Protection
 - SB 954 (Harmon) – Legislative Procedure, Committee Referrals
 - SB 1171 (Negrete McLeod) – Regulatory Boards, Operations
 - SB 1172 (Negrete McLeod) – Sunset of Diversion Program
4. *Regulation of Dangerous Drugs and Devices*
 - AB 1455 (Hill) -- Pseudoephedrine
 - AB 2548 (Block) – CURES – Prescription Drug Monitoring Program
 - SB 971 (Pavley) – Bleeding Disorders: Blood Clotting Products
 - SB 1071 (DeSaulnier) – CURES
 - SB 1106 (Yee) – Prescribers – Dispensing of Samples
5. *Pharmacy Licensing Issues*
 - AB 2077 (Solorio) – Centralized Hospital Packaging Pharmacies
 - AB 2292 (Lowenthal) – Pharmacy: Clinics
 - AB 2551 (Hernandez) – Pharmacy Technician: Scholarship and Loan Repayment Program
6. *Distribution of Needles and Syringes*
 - AB 1701 (Chesbro) – Hypodermic Needles and Syringes
 - AB 1858 (Blumenfield) – Hypodermic Needles and Syringes: Exchange Services
 - AB 2139 (Chesbro) – Solid Waste: Product Stewardship
 - SB 1029 (Yee) -- Hypodermic Needles and Syringes
7. *General / Other*
 - AB 2112 (Monning) – Prescription Record Privacy Act

	<p>4th Qtr 09/10: Board considers additional legislation AB 1939 (Fletcher) Sharps Waste SB1111 (Negrete McLeod) DCA Enforcement Model</p> <p>Apr. 2010: Board takes positions on legislative measures: AB 1701 (Chesbro) Support AB 2104 (Hayashi) Oppose AB 2292 (Lowenthal) Support SB 1106 (Yee) Support if Amended AB 1916 (Davis) Bill is dead (failed deadline) AB 2112 (Monning) Bill is dead (failed deadline) SB 1111 (Negrete McLeod) Bill is dead (failed deadline)</p> <p>May 2010: AB 1869 (Anderson) Bill is dead (failed deadline) AB 1939 (Fletcher) Bill is dead (failed deadline)</p> <p>June 2010: SB 1390 (Corbett) Fails passage in policy committee SB 954 (Harman) Bill is dead (failed deadline) SB 1171 (Negrete McLeod) Bill is dead (failed deadline) AB 2139 (Chesbro) Bill is dead (failed deadline) AB 2292 (Lowenthal) Bill is dead (failed deadline) AB 2548 (Block) Bill is dead (Failed deadline)</p> <p>Apr./May 2010: AB 2104 (Hayashi) Amended twice</p> <p>June 2010: AB 2104 (Hayashi) Amended to authorize Board appointment of Executive Officer with approval of DCA Director.</p> <p>July 2010: AB 2077 (Solorio – Centralized Hospital Packaging Pharmacies. Board establishes Support position.</p>
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1st Qtr 10/11: Governor signs the following legislation:

AB 2104 (Hayashi) – Requires DCA Director approval of the Board's appointment of Executive Officer (Chapter 374, Statutes of 2010)

AB 1659 (Huber) – State Government, Agency Repeals (Chapter 666, Statutes of 2010)

AB 2130 (Huber) – Joint Committee on Boards, Commissions and Consumer Protection (Chapter 670, Statutes of 2010)

SB 1172 (Negrete McLeod) – Diversion Programs (Chapter 517, Statutes of 2010)

AB 1071 (Chesbro) – Hypodermic Needles and Syringes (Chapter 667, Statutes of 2010)

SB 1414 (Hill) – Apomorphine: Unscheduled (Chapter 76, Statutes of 2010)

AB 2699 (Bass) – Licensure Exemption: State of Emergency (Chapter 270, Statutes of 2010)

Governor vetoes the following legislation:

AB 1858 (Blumenfield) – Hypodermic Needles and Syringes

SB 1029 (Yee) – Hypodermic Needles and Syringes

AB 2077 (Solorio) – Centralized Hospital Packaging Pharmacies

SB 971 (Pavley) – Bleeding Disorders: Blood Clotting Products

AB 2747 (Lowenthal) – Prisons: Pharmacy Services

The following legislation fails passage:

AB 1455 (Hill) – Pseudoephedrine

SB 1071 (DeSaulnier) – CURES

SB 1106 (Yee) – Prescribers Dispensing of Samples

AB 2551 (Hernandez) – Pharmacy Technician Scholarship & Loan Repayment Program

AB 1310 (Hernandez) – Healing Arts Database

2nd Qtr 10/11: SB 41 (Yee) Introduced – Hypodermic Needles and Syringes

AB 36 (Hill) Introduced – Ephedrine: Retail Sale

Board approves provisions for sponsorship in 2011/2012 Session:

(1) Pharmacists Recovery Program

- *Section 4362 – Amend to require that a participant in the pharmacists recovery program be responsible to pay an administrative co-pay each month to cover a portion of the administrative costs borne by the board; provision to allow the board to waive or defer the requirement based on a demonstrated financial hardship.*

3rd Qtr 10/11: Board advised changes to 4362 will not be sought this year.

1. Board-Sponsored Legislation

SB 431 (Emmerson) Pharmacies: regulation

- Sections 4040.5, 4081 and 4126.5 – Proposal Regarding Return of Medicine to Reverse Distributors
- Sections 4104, 4105 and 4112 – Enforcement Enhancements

2. Legislation Impacting the Practice of Pharmacy or the Board's Jurisdiction

a. Board of Pharmacy/Licensing

- AB 377 (Solorio) Pharmacy: Centralized hospital packaging
- AB 399 (Lowenthal, Bonnie) Corrections: offender pharmacies
- AB 847 (Lowenthal, Bonnie) Pharmacy: clinics
- SB 100 (Price) Healing arts
- SB 632 (Emmerson) Pharmacy

b. Controlled Substances/Marijuana

- AB 507 (Hayashi) Pain management
- SB 847 (Correa) Medical Cannabis Licensing Act
- SB 786 (Dutton) Controlled substances

c. Reporting Requirements/Records

- SB 260 (Cannella) Controlled substances
- SB 315 (Wright) Ephedrine and pseudoephedrine
- SB 360 (DeSaulnier) Controlled Substance Utilization Review and Evaluation System

d. Healing Arts/DCA

- AB 675 (Hagman) Continuing education
- AB 958 (Berryhill) Regulatory boards: limitation periods
- AB 1003 (Smyth) Professional and vocational licenses
- AB 1328 (Pan) Professions and vocations
- SB 231 (Emmerson) Regulatory boards: healing arts
- SB 227 (Wyland) Business and professions: licensure (corrected)
- SB 538 (Price) Healing arts
- SB 544 (Price) Healing arts
- SB 667 (Wyland) Healing arts

e. Other

- AB 389 (Mitchell) Bleeding disorders: blood clotting products
- AB 604 (Skinner) Needle exchange programs
- SB 41 (Yee) Hypodermic Needles and Syringes
- SB 514 (Simitian) Dextromethorphan: sale to minors prohibited
- SB 850 (Leno) Medical records: confidential information

	<p>7. Expand the conditions under which a pharmacist may administer an immunization independent of physician protocol.</p> <p><i>March 2007: Licensing Committee considers and approves concept. More work is required.</i></p> <p><i>June 2007: Licensing Committee considers draft language and requests additional refinements to proposal for consideration at September 2007 committee meeting.</i></p> <p><i>Sept. 2007: Licensing Committee forwards to full board legislative proposal.</i></p> <p><i>Oct. 2007: Board approved draft legislation.</i></p> <p><i>Nov. 2007: Staff meeting with stakeholders to elicit support for the proposal.</i></p> <p><i>Dec. 2007: Staff develop fact sheets and work with experts in immunizations.</i></p> <p><i>Feb. 2009: Assembly Member Skinner authors AB 977, to allow pharmacists to initiate and administer immunizations pursuant to the Centers for Disease Control's guidelines for the adult and adolescent immunizations schedules.</i></p> <p><i>April 2009: Bill amended to allow pharmacists to initiate and administer pneumonococcal and influenza vaccines.</i></p> <p><i>May 2009: Bill amended to intent language requesting the California Pharmacists Association to provide information to legislative Committees on the status of immunization protocols. (2-year bill)</i></p> <p><i>Jan. 2010: Bill amended (removing opposition) to allow pharmacists to administer influenza vaccinations pursuant to protocol and to require specified documentation and reporting.</i></p> <p><i>Jan. 2010: AB 977 passes out of Assembly Health Committee</i></p> <p><i>Board reaffirms "support" position.</i></p> <p><i>April 2010: Board changes position from "sponsor" to "support".</i></p> <p><i>June 2010: AB 977 amended to apply only to a pharmacist associated with an independent community pharmacy. Bill died in committee.</i></p>
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	<p>8. Advocate the board's role as an advocate for consumers by redesigning prescription label for all medicines dispensed to California patients.</p> <p><i>Oct. 2007: Governor signs SB 472 (Chapter 470, Statutes of 2007) Prescription Drugs: Labeling Requirements.</i></p> <p><i>Apr. 2008: First public forum held in Fremont.</i></p> <p><i>May 2008: Staff develop survey form to distribute to consumers to solicit input</i> <i>Staff attend Senior Seminar, interview attendees about prescription label and distribute surveys.</i></p> <p><i>June 2008: Staff attends community events, interview attendees about prescription label and distribute surveys.</i></p> <p><i>July 2008: Staff attends community events, interview attendees about prescription label and distribute surveys.</i></p> <p><i>Oct. 2008: Staff continues to attend community events, interview attendees about prescription label and distribute surveys.</i> <i>Public Education Committee updated on the status of survey results.</i></p> <p><i>Feb. 2009: Senator Corbett authors SB 470, to allow the purpose for which a medicine is prescribed to be included in the prescription and prescription label.</i></p> <p><i>May 2009: Bill passes out of the Senate</i></p> <p><i>Oct. 2009: Governor signs SB 470 (Chapter 590, Statutes of 2009).</i></p> <p><i>Oct. 2009: Board approves regulatory language for notice.</i></p> <p><i>Nov. 2009: Regulatory effort initiated.</i></p> <p><i>June 2010: Board adopts final text (See Objective 3.2, Task 16).</i></p> <p><i>Oct. 2010: Rulemaking submitted to the Office of Administrative Law for review.</i></p> <p><i>Nov. 2010: Regulation approved by Office of Administrative Law.</i></p> <p><i>Jan. 2011: Regulation takes effect.</i></p> <p>9. Secure statutory fee increase to ensure sufficient funding to fulfill all of the boards statutory obligations as a consumer protection agency.</p> <p><i>Dec. 2008: Board receives findings of independent fee audit.</i></p> <p><i>Jan. 2009: Board votes to pursue fee increase.</i></p> <p><i>Feb. 2009: Assembly Member Emmerson authors AB 1071 which establishes new application and renewal fees.</i></p> <p><i>June 2009: Bill passes out of the Assembly.</i></p> <p><i>Sept. 2009: Bill is enrolled and sent to the Governor.</i></p> <p><i>Sept. 2009: Bill enrolled, then pulled back and amended to include sunset provisions for the board. Amendments pass Senate and Assembly concurs. The bill is re-enrolled.</i></p> <p><i>Oct. 2009: Governor signs AB 1071 (Chapter 270, Statutes of 2009)</i></p> <p><i>Jan. 2010: Statutory fee schedule implemented (supersedes 16 CCR 1749)</i></p>
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10. Advocate legislation to enhance the board's enforcement activities.

Jan. 2010: Staff working to include in department-wide enforcement legislation the following enhancements to the board's enforcement activities (board approved Oct 2009):

Section 4081 - Records of Dangerous Drugs and Devices Kept Open for Inspection; Maintenance of Records, Current Inventory.

Section 4104 - Licensed Employee, Theft or Impairment, Pharmacy Procedures.

Section 4112 - Nonresident Pharmacy; Registration; Provision of information to Board; Maintaining Records; Patient Consultation

2nd Qtr 10/11: Board approves provisions for sponsorship in 2011/2012 Session.

(1) Enforcement Enhancements

- Section 4104 – Amend to clarify that a pharmacy shall provide to the board, within 14 days, evidence of a licensee's theft or impairment. Require the pharmacy to conduct an audit to determine the scope of loss, and to provide the board with a certified copy of the audit results.
- Section 4105 – Amend to specify a time period in which records shall be provided to the board when requested by an inspector or authorized representative of the board.
- Section 4112 - Nonresident Pharmacy; Registration; Provision of information to Board; Maintaining Records; Patient Consultation.

(2) Pharmaceutical Waste – Reverse Distributors

- Section 4040.5 – Amend to specify that a reverse distributor may not accept previously dispensed medicine and specify that previously dispensed medicine returned to a pharmacy can only be handled by a licensed integrated waste hauler.
- Section 4081 – Amend to specify what records must be maintained of drugs being returned to a wholesaler or reverse distributor; and specify information that is to be maintained for drugs that are returned via a licensed integrated waste hauler.
- Section 4126.5 – Amend to authorize a pharmacy to furnish drugs to a licensed integrated waste hauler for the sole purpose of disposing of pharmaceutical waste returned to a pharmacy.

3rd Qtr 10/11: SB 431 is introduced containing – amendments to 4104, 4105, and 4112.

4th Qtr 10/11: SB 431 amended to also contain changes to 4081, 4126.5, and 4126.7.

Objective 3.2	Annually identify and respond with regulatory changes to keep pharmacy regulations current and consistent with the board's mission.
Measure:	Percentage successful enactment of promoted regulatory changes.
Tasks:	<ol style="list-style-type: none"> 1. Authorize technicians to check technicians in inpatient pharmacies with clinical pharmacist programs (sections 1793.7-1793.8). <i>Jan. 2007: Office of Administrative Law approves rulemaking. Regulation takes effect.</i> 2. Authorize the use of prescription drop boxes and automated delivery machines for outpatient pharmacies (sections 1713 and 1717(e)). <i>Jan. 2007: Regulation takes effect following approval by the Office of Administrative Law.</i> 3. Make technical changes in pharmacy regulations to keep the code updated. <i>April 2007: Section 1775.4 – contested citations. DCA determines no regulation is needed to accomplish the requirement to allow 1 rescheduling of an office conference. This regulation is withdrawn.</i> <i>June 2007: Section 1706.2 – Criteria for abandonment of files, changes take effect following approval by the Office of Administrative Law.</i> 4. Repeal the requirement to post a notice regarding electronic files (section 1717.2). <i>March 2007: Office of Administrative Law approves rulemaking. Regulation takes effect.</i> 5. Revise and update Disciplinary Guidelines revision and update (section 1760). <i>Oct. 2007: Board approves regulation for 45-day comment period.</i> <i>May 2009: Regulation and revised Disciplinary Guidelines approved and takes effect.</i> 6. Self-assessment of a wholesaler by the designated representative (section 1784). <i>April 2007: Office of Administrative Law approves rulemaking. Regulation takes effect.</i> <i>March 2011: Board releases language for 45-day comment to update regulation text and update Self-Assessment Form 17M-26 (See Objective 3.2, Task 24)</i> 7. Exempt the address of records of interns from display on the board's Website (section 1727.1). <i>Sept. 2006: Office of Administrative Law approves rulemaking. Regulation takes effect October 2006.</i> 8. Modification of building standards for pharmacies – rulemaking by the California Building Standards Commission. <i>July 2006: Board notified that a new procedure now exists for adopting building standards. Staff will pursue these procedures in 2007.</i> <i>June 2007: Board staff submit rulemaking file to the California Building Standards Commission.</i> 9. Update Notice to Consumers Poster in conformance with AB 2583 (Chapter 487, Statutes 2006)(Section 1707.2). <i>Feb. 2007: Board notices regulation for 45 days comment period.</i> <i>Nov. 2007: Regulation changes takes effect.</i> <i>Jul. 2008: Board mails updated Notice to Consumers to all pharmacies in California.</i> <i>1st Qtr 10/11: Board discusses updates to Notices to Consumers (See Objective 3.2, Task 25)</i>

	<p>10. Secure changes without regulatory effect (Section 100 changes) to pharmacy regulations to keep them accurate and current.</p> <p><i>Dec. 2007: Office of Administrative Law approves Section 100 Changes. Amend the following:</i></p> <p><i>1707 – Waiver of requirements for off-site storage of records</i></p> <p><i>1709.1 – Designation of pharmacist-in-charge</i></p> <p><i>1715 – Self-assessment of a pharmacy by the pharmacist-in-charge</i></p> <p><i>1717 – Pharmacy practice</i></p> <p><i>1746 – Emergency contraception</i></p> <p><i>1780.1 – Minimum standards for veterinary food-animal drug retailers</i></p> <p><i>1781 – Exemption certificate</i></p> <p><i>1787 – Authorization to distribute dialysis drugs and devices</i></p> <p><i>1790 – Assembling and packaging</i></p> <p><i>1793.8 – Technician check technician</i></p> <p><i>Repeal section 1786 – Exemptions</i></p> <p><i>March 2009: Office of Administrative Law approves Section 100 Changes to update the self-assessment forms required in California Code of Regulations 1715 and 1784.</i></p> <p>11. Increase fees to keep the board's contingency fund solvent and maintain operations.</p> <p><i>Nov. 2007: Office of Administrative Law approves rulemaking.</i></p> <p><i>Nov. 2007: Staff complete necessary programming changes and begin advising licensees of the change.</i></p> <p><i>Jan. 1, 2008: New fees take effect.</i></p> <p><i>Oct. 2009: Governor signs AB 1071, new fee schedule.</i></p> <p><i>Jan. 2010: Statutory fee schedule becomes effective (supersedes 16 CCR §1749)</i></p> <p>12. Secure regulatory standards for pharmacies that compound. (§1735 et al)</p> <p><i>Nov. 2007: Board releases language for the 45-day comment period.</i></p> <p><i>Sep. 2008: Board releases (withdrawn) language for 45-day comment period.</i></p> <p><i>Oct. 2008: Regulation hearing</i></p> <p><i>Jan. 2010: Office of Administrative Law approves regulation.</i></p> <p><i>July 2010: Regulation and Self-Assessment Form 17M-39 is effective. Board staff developing fact sheet for pharmacies.</i></p> <p><i>March 2011: Board releases language for 45-day comment to update regulation text and update Self-Assessment Form 17M-39 (See Objective 3.2, Task 24)</i></p> <p>13. Establish an ethics course (§1773 and §1773.5).</p> <p><i>Sep. 2008: Board notices regulation for 45-day comment period.</i></p> <p><i>Sep. 2009: Regulation takes effect.</i></p> <p>14. Pharmacist Renewal Requirements (§1702).</p> <p><i>Dec. 2009: Board notices regulation for 45-day comment period.</i></p> <p><i>Feb. 2010: Board adopts regulation.</i></p> <p><i>June 2010: Office of Administrative Law approves regulation.</i></p> <p><i>Dec. 2011: Regulation takes effect.</i></p> <p>15. Dishonest Conduct During Pharmacist Examination; Confidentiality of Exam Questions (§1721 and §1723.1).</p> <p><i>Oct. 2009: Board notices regulation for 45-day comment period.</i></p> <p><i>Jan. 2010: Board adoption of regulation as noticed.</i></p> <p><i>July 2010: Rulemaking submitted to the Office of Administrative Law for review.</i></p> <p><i>Aug. 2010: Office of Administrative Law approves regulation.</i></p> <p><i>Sep. 2010: Regulation takes effect.</i></p>
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16. **Standardized, Patient-Centered Prescription Labels (§1707.5)**
Nov. 2009: Board notices regulation for 45-day comment period.
Jan. 2010: Regulation hearing.
Feb. 2010: Board modifies text of regulation.
Board notices modified text for 1st 15-day comment period.
Apr. 2010: Board modifies text of regulation.
Board notices modified text for 2nd 15-day comment period.
June 2010: Board adopts regulation language noticed on April 28.
July 2010: Rulemaking submitted to Department for review.
Oct. 2010: Rulemaking submitted to the Office of Administrative Law for review.
Nov. 2010: Office of Administrative Law approves rulemaking.
Jan. 2011: Regulation takes effect.
17. **Update Protocol for Pharmacists Furnishing Emergency Contraception (EC) (§1746)**
Jan. 2010: Board approves language to initiate rulemaking to correct a typographical error in the Emergency Contraception Protocol regulation.
July 2010: Board begins working with Medical Board to update the EC Protocol.
18. **Board Issued Continuing Education (CE) Credit (§1732.2)**
Feb. 2010: Board votes to amend section 1732.2 defining board-issued CE and notice regulation for 45-day comment period.
Oct. 2010: Board notices regulation for 45-day comment period.
Feb. 2011: Board issues Modified Text for 15-day comment period. If no negative comments, approves adoption of language and directs that rulemaking be completed.
19. **Notice to Consumers re: Patient-Centered Prescription Labels**
Apr. 2010: Board directs staff to bring regulatory language to the July 2010 meeting re: increased font size, and language services.
July 2010: Board discusses possible language for Notice to Consumers.
October 2010: Board discusses possible language for Notice to Consumers. Votes to modify and move existing Consumer Notices from §1702. to a new section at 16 CCR §1707.6., to include language for increased font size and oral interpretive services. Discussion to continue at next board meeting.
1st - 3rd Qtr 10/11: Board discusses updates to the Notices to Consumers to incorporate Patient-Centered Requirements.
March 2011: Board approves language and directs staff to initiate a formal rulemaking to amend 16 CCR 1707.2 and to add 16 CCR §1707.6; directs staff to issue language for a 45 day public comment period; and to schedule a public hearing for the proposed regulation.
20. **Update references to USP Standards (§1780)**
1st Qtr 07/08: Board considers review of USP references.
2nd Qtr 07/08: Subcommittee established to conduct full review of USP updates needed.
21. **Veterinarian Food-Animal Drug Retailer Self-Assessment (§1785)**
1st Qtr 07/08: Board approves regulation for notice.
2nd Qtr 07/08: Work on rulemaking stopped to allow for comprehensive review of Veterinary Food-Animal Drug Retailer Program.
22. **Accreditation Agencies for Pharmacies that Compound (§1751.x)**
1st Qtr 07/08: Board approves regulation text for notice (upon additional review by counsel, modification of language is necessary prior to notice of proposed text)

	<p>23. Applicants to submit a Self-Query from the National Practitioner Data Bank – Healthcare Integrity & Protection Data Bank (NPDB-HIPDB)(§ 1727.2, § 1728, § 1793.5)</p> <p>1st Qtr 10/11: <i>Board approves additional modifications to the Pharmacy Technician Application (Form 17A 5) and directs that the language approved in October 2010 and the application approved February 2011 be issued for a 45-day public comment period.</i></p> <p>2nd Qtr 10/11: <i>Board votes to require applicants to submit a Self-Query from the National Practitioner Data Bank – Healthcare Integrity & Protection Data Bank (NPDB-HIPDB), and to amend/update the Pharmacy Technician application:</i></p> <ul style="list-style-type: none"> • <i>Section 1728 – Amend to require an applicant for the pharmacist examination to submit a Self-Query Report from NPDB-HIPDB.</i> • <i>Section 1727.2. – Add new section to require an applicant for an Intern Pharmacist license to submit a Self-Query Report from NPDB-HIPDB.</i> • <i>Section 1793.5. – Amend to require a Pharmacy Technician applicant to submit a Self-Query Report from NPDB-HIPDB; and to modify the Pharmacist Technician Application (17A-5), incorporated by reference.</i> <p>April 2011: <i>Proposed Text to Amend §1793.5 and modify Form 17A-5 issued for 45 day public comment.</i></p> <p>24. Update of Self-Assessment Forms</p> <p>March 2011: <i>Board initiates rulemaking to update 16 CCR §1715, §1735.2, §1751 and §1784 and the self assessment forms incorporated by reference:</i></p> <p><i>17M-13 Community Pharmacy & Hospital Outpatient Pharmacy Self-Assessment</i></p> <p><i>17M-14 Hospital Pharmacy Self-Assessment</i></p> <p><i>17M-26 Wholesaler Dangerous Drugs & Dangerous Devices Self-Assessment</i></p> <p><i>17M-39 Community Pharmacy & Hospital Outpatient Pharmacy Compounding Self-Assessment</i></p>
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Objective 3.3	Review five areas of pharmacy law for relevancy, currency and value for consumer protection by June 30, 2011.
Measure:	Number of areas of pharmacy law reviewed.
Tasks:	<p>1. Initiate review of the pharmacist-in-charge requirement.</p> <p><i>Aug. 2007:</i> Staff and counsel review pharmacist-in-charge and designated representative-in-charge statutes and regulations for reporting requirements and make recommendations to amend various statutes and regulations.</p> <p><i>Oct. 2007:</i> Legislation and Regulation Committee reviews draft language to be incorporated into omnibus bill.</p> <p><i>Jan. 2008:</i> Board approves omnibus language recommended by Legislation and Regulation Committee.</p> <ul style="list-style-type: none"> • Section 4022.5 – Designated Representative; Designated Representative-in-Charge • Section 4036.5 – Pharmacist-in-Charge • Section 4101 – Pharmacist-in-Charge; Designation Representative-in-Charge; Termination of Status; Duty to Notify the board. • Section 4113 – Pharmacist-in-Charge; Approval; Responsibilities; Notifications • Section 4160 – Wholesaler Licenses • Section 4196 – Veterinary Food-Animal Drug Retailer Licenses; Persons Allowed in Areas Where Drugs are Stored, Possessed, or Repacked • Section 4305 – Pharmacist-in-Charge; Notice to Board; Disciplinary Action • Section 4329 – Nonpharmacists; Prohibited Acts • Section 4330 – Proprietors; Prohibited Acts <p><i>April 2008:</i> The following provisions are not incorporated into omnibus bill.</p> <ul style="list-style-type: none"> • Section 4101 – Pharmacist-in-Charge; Designation Representative-in-Charge; Termination of Status; Duty to Notify the board. • Section 4113 – Pharmacist-in-Charge; Approval; Responsibilities; Notifications • Section 4160 – Wholesaler Licenses • Section 4196 – Veterinary Food-Animal Drug Retailer Licenses; Persons Allowed in Areas Where Drugs are Stored, Possessed, or Repacked <p><i>Sept. 2008:</i> Governor vetoes SB 1779.</p> <p><i>Jan. 2009:</i> Board seeks to reintroduce provisions contained in SB 1779 via omnibus bill. Provisions contained in SB 819 and SB 821. Senate BP & ED introduce Omnibus bills containing previously-approved / Pharmacist-in-Charge provisions.</p> <p><i>Sept. 2009:</i> SB 819 and SB 821 enrolled and sent to the Governor.</p> <p><i>Oct. 2009:</i> Governor signs SB 819 and SB 821. Provisions go into effect January 2010.</p> <p>2. Update Protocol for Pharmacists Furnishing Emergency Contraception (EC) (§1746)</p> <p><i>July 2010:</i> Board begins working with the Medical Board to update the EC Protocol.</p> <p>3. Initiate review of Pharmacist-in-Charge Requirements.</p> <p>4. Review of Continuing Education for Pharmacists in Specific Areas.</p> <p><i>1st Qtr 10/11:</i> Board moves to pursue implementation of CE for specific content areas.</p>